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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1938

No. 15

WAIALUA AGRICULTURAL COMPANY, LIMITED,
PETITIONER,

vs.

ELIZA R. P. CHRISTIAN, AN INCOMPETENT PERSON,
BY HERMAN V. VON HOLT, HER GUARDIAN,
ET AL.

No. 17

ELIZA R. P. CHRISTIAN, AN INCOMPETENT PERSON,
BY HERMAN V. VON HOLT, HER GUARDIAN,
PETITIONER,

vs.

WAIALUA AGRICULTURAL COMPANY, LIMITED

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE NINTH CIRCUIT

PETITIONS FOR CERTIORARI FILED { MARCH 30, 1938.
MARCH 31, 1938.

CERTIORARI GRANTED MAY 2, 1938.

No. 8329

United States
Circuit Court of Appeals

For the Ninth Circuit.

ELIZA R. P. CHRISTIAN, an incompetent person by
HERMAN V. VON HOLT, her guardian,
Appellant,

vs.

WAIALUA AGRICULTURAL COMPANY, LIMITED, an
Hawaiian corporation, **JAMES L. HOLT**, and **ANNIE**
HOLT KENTWELL,
Appellees.

WAIALUA AGRICULTURAL COMPANY, LIMITED, an
Hawaiian corporation,
Cross-Appellant,

vs.

ELIZA R. P. CHRISTIAN, an incompetent person, by **HER-**
MAN V. VON HOLT, her guardian, **JAMES L. HOLT**
and **ANNIE HOLT KENTWELL**,
Cross-Appellees.

Transcript of Record

In Three Volumes

VOLUME II

Pages 505 to 1032

Upon Appeal and Cross-Appeal From the Supreme Court
of the Territory of Hawaii.

use and occupation from April 10, 1922, net above taxes

From the attitude taken by the parties in this case, this Court can well see that considerable difficulty might be left if this Court refused to cancel the assent to the 1905 lease and left the question open for the future "if-and-when-partition-suit" as to what constituted one-third ($1/3d$) of the improvements existing as of April 1, 1930. Hence, it appears to be far more in harmony with Respondent's desire for complete equity within the issues of this case, (as well as in harmony with the reasoning of the Supreme Court affirming the cancellation of the 1910 deed), to solve the equities as between Eliza Christian and Waialua Company by (1) **TERMINATING AS TO ELIZA CHRISTIAN** all rights of whatever kind under said lease, (2) placing Waialua Company's accountability to Eliza Christian, imbecile, on the [598] basis merely of reasonable net rental value for exclusive use and occupation, and (3) at the same time settling the equities, so far as the essential unity of plantation is bound up with existing improvements, by appropriate conditions.

PINEAPPLE AREAS OF HOLT ESTATE LANDS.

On July 28, 1932, attorneys for Waialua Company filed a memorandum supplemental to their brief of April 7, 1932, in relation to the effect of the lease by Waialua Company to Hawaiian Pine-

apple Company of January 1, 1923, (Exhibit A-B1 of 1929 Accounting Hearing) on the question of cancellation of Petitioner's assent to the 1905 lease. In this memorandum Counsel for Waialua Company call attention to the fact that Petitioner, thru Counsel, unequivocally in the 1929 hearing elected to affirm this 1923 pineapple lease and accept the benefits thereunder as co-tenant, lessor. In order to understand the situation IT IS NECESSARY TO REFER TO THE CONDITIONS EXISTING IN 1923 at the time of the lease in question, as distinct from arguments advanced in 1932.

Under the entire evidence available to the Court at this hearing, it is conclusively shown that (1) after the deeds of May 1910, Waialua Company considered itself THE OWNER of the John D. Holt life interest and the Eliza Christian expectancy; and (2) [599] after the death of John D. Holt in 1922, Waialua Company believed that it was finally confirmed as the owner in fee simple of twenty-five twenty-sevenths ($25/27$ ths) of the Holt Estate lands, and Waialua Company acted on that basis. One-twenty-seventh ($1/27$ th) still belonged to Gussie Holt, from whom Waialua Company had an extension of lease expiring in 1949. An additional one-twenty-seventh ($1/27$ th) belonged to Elizabeth K. Richardson, from whom Waialua Company still had its rights under the 1905 lease, and from whom an extension has since been obtained by Hawaiian Pineapple Company. As far as Eliza

Christian was concerned her right as inheritance had been definitely determined by the death of her father in 1922, and Waialua Company then had the deed of 1910 from her. (see summary, Ex. Ac-B5.)

In the supplemental decision of this Court of August 9, 1929, it is pointed out that, under schedules attached to the Hawaiian Pineapple lease in 1923, Waialua Company owned or controlled in its own right Ninety-Nine Hundred Ninety-One and Eighteen One-Hundredths (9,991.18) acres of lands described in these schedules, exclusive of Petitioner's claims. The interest of the Petitioner, Eliza Christian, would affect an additional Twenty-One Hundred Fifty-Eight and Eighty-Two One Hundredths (2,158.82) acres (total [600] Twelve Thousand One Hundred Fifty (12,150) Acres) covered in the schedules of the lease. However, it must continually be kept in mind that up to 1928 there was no attack upon the Eliza Christian conveyances. No question of a defect in this respect entered into the FACTS of the negotiations between Waialua Company and Hawaiian Pineapple Company.

With these facts in mind let us consider the 1923 lease itself. This 1923 lease acknowledges payment to Waialua Company by Hawaiian Pineapple Company of Two Million One Hundred Nine Thousand One Hundred Seventy-Nine and 25/100 (\$2,109,179.25) Dollars, RENT IN FULL IN ADVANCE FOR THE ENTIRE TERM (17½ YEARS) OF THIS LEASE ON A COMBINED ACREAGE

OF TWELVE THOUSAND ONE HUNDRED FIFTY (12,150) ACRES. (The testimony showed that this rental represented the 1923 present cash value of rents on said acreage of Fifteen (\$15.00) Dollars per acre per annum, net above taxes, over a period of seventeen and one-half ($17\frac{1}{2}$) years, discounted at five (5) percent.)

The lease made certain exceptions and reservations in favor of Wai'alua Company which included among other things all water rights including the use of the same; all existing bridges, roads, railroads, utilities in connection with water systems, wires and poles; and the rights of ingress and egress to maintain [601] and repair the foregoing.

The lease then provides: "to have and to hold, **FREE OF RENT OTHER THAN THE AFORESAID PAID UP** rent, such of the demised premises as are owned by the lessor in fee simple and also such of the demised premises in and to which the estate of the Lessor is held as Lessee of others over periods having more than seventeen and a half ($17\frac{1}{2}$) years yet to run, for and during the term of seventeen and a half ($17\frac{1}{2}$) years from the 1st day of January, 1923, to the 30th day of June, 1940; both days inclusive, and such of the demised premises in and to which the estate of the Lessor is held as Lessee of others over periods having less than seventeen and a half ($17\frac{1}{2}$) years yet to run, for and during the unexpired terms of said periods respectively and for and during the terms of any renewals or extensions of the respect-

ive leases thereof up to and including June 30th, 1940."

The Lessor then covenants with the Lessee that "the Lessee shall peaceably hold and enjoy the demised premises for the term * * * created, without hindrance or molestation by the Lessor * * * except as herein expressly provided".

Then follows covenants BY THE LESSEE which include (1) a covenant to pay taxes, etc.; (2) a covenant to repair fences; (3) a covenant against [602] assignment without prior written consent of the Lessor; a number of other covenants intervene and then the Lessee covenants, (11) "That it will, in so far as applicable to the land hereby demised, in all respects keep, observe and perform all the terms, covenants, conditions, stipulations and agreements on the part of the tenant to be kept, observed and performed (except as to the payment of rent reserved thereby which shall be paid by the Lessor) as set out and contained in the following leases, to wit: * * * (b) Carlos A. Long et al. to Waialua Agricultural Company, Limited, made March. 17, 1905, recorded in Book 263, page 365, said Registry * * *".

In connection with this last covenant BY THE LESSEE (Hawaiian Pineapple Co.) it must again be emphasized and kept in mind that the only outstanding interests (from the standpoint of facts considered as of 1923), affected by the 1905 lease were a one-twenty-seventh (1/27th) interest owned by Elizabeth K. Richardson, and a one-twenty-

seventh (1/27th) interest owned by Gussie Holt from whom an extension had already been obtained running to March 31, 1949. Or, in other words, the complete record of this case indicates that in 1923 this 11th covenant by the Lessee referring to the 1905 lease had then no present bearing upon the Eliza Christian inheritance and was not so considered [603] in any of the negotiations with the Pineapple Company.

This latter conclusion of fact from the record is so emphasized because of the present argument of Counsel that this reference is, by some "legerdemain", to be considered as a confirmation of the 1905 lease by Petitioner when she elected to ratify the 1923 lease, in connection with the present question of cancellation of the effect of the 1905 assent as to Eliza Christian. Neither the facts considered by the parties in 1923 nor the position taken by Waialua Company in the hearings of 1929, justify any such fallacious reasoning or inference. It is an assumption of the very point in issue: the effect of Petitioner's imbecility in 1905. This sort of argument is purely a creation of Counsel after it became apparent in the hearings of 1929 to 1932 that the 1910 deed was to be cancelled as to Eliza Christian and that there was some necessity to attempt to revive the efficacy of the 1905 lease as to Petitioner, or rather to prevent Petitioner from presenting her incompetency in 1905 as a ground for relief. This recitation of the existence of the 1905

lease was obviously included in the Hawaiian Pineapple lease of 1923, under the testimony before this Court, solely in connection with the fact relating to the two-twenty-sevenths (2/27ths) interests [604] in which Waialua Company had and claimed only a lessees's interest.

The lease then provides a "mutual" covenant and agreement: "(a) that from time to time and as often as the estate hereby created in the Lessee IN THE LANDS IN OR TO WHICH THE ESTATE OF THE LESSOR HEREIN IS THAT OF LESSEE, shall cease by limitation of time OR BECAUSE OF THE INTERVENTION OF a paramount title holder and/or FOR ANY OTHER REASON SAID LANDS PASS OUT OF THE CONTROL OF THE LESSOR prior to the expiration of the term of this lease, or as the estate hereby created in the Lessee in any other lands demised by this lease shall cease because of the intervention of a paramount title holder and/or for any other reason said lands shall pass out of the control of the Lessor except as herein provided. THE LESSOR WILL so often as the same shall happen forthwith AS TO EACH AND EVERY ACRE OF PINEAPPLE LAND SO LOST secure to and place the Lessee in the possession of equal areas of pineapple land for the remainder of the term of this lease, provided it then has them, and IF IT cannot then so provide them, then the LESSEE MAY upon the expiration of the term of seventeen

and a half (17½) years hereby created continue in the possession of similar land free and under the terms [605] and provisions of this lease to be carved out of the other land covered by this lease " * * ", according to a method prescribed. (Under scoring ours.) The balance of this covenant gives further rights and privileges to the Lessee. There are also further provisions looking toward the possibility of renewal of the lease, etc., under prescribed and expressed terms.

The foregoing covenant is quoted by Counsel for Waialua Company in connection with an argument that this is "A VALUABLE RIGHT" to Waialua Company which cannot be taken away by a cancellation and accounting method in this proceeding. Again, this Court is compelled to emphasize that, in 1922 and 1923 when this pineapple lease was negotiated, the Eliza Christian one-third (1/3d) interest in the Holt Estate lands had vested by the death of her father in 1922 and was in fact considered at that time as belonging to Waialua Company under the 1910 deed. The existence of any defect in this 1910 deed was not a part of the negotiations and formed no part of the background, IN FACT, underlying this specific provision of the 1923 lease. It may, also, be noted that this covenant could only be read as a protection to Waialua Company (1) if the 1905 assent were not cancelled [606] herein; or (2) if Petitioner refused to elect to ratify the lease.

Moreover, it must be remembered, that the 1923 lease was a paid-up lease in which the Pineapple Company was parting with the equivalent of cash in the sum of over Two Million Dollars. Hence, with this in mind and construing the express language of the covenant referred to, it is clear that THIS PROVISION IS AN OBLIGATION ON THE PART OF WAIALUA COMPANY BY WHICH THE LATTER COMPANY COULD BE COMPELLED BY THE PINEAPPLE COMPANY TO SECURE TO THE PINEAPPLE COMPANY THE CONSIDERATION FOR WHICH IT WAS CONTRACTING IN THE PAYMENT OF THIS CASH. The attempt at the present time by Counsel for the Waialua Company to construe this covenant as a "right" is again a creation by the attorneys after the fact was emphasized by the Supreme Court that the continued efficacy of the 1905 lease must be adjudicated in connection with Eliza Christian's congenital imbecility after it was determined in this proceeding that the 1910 deed should be cancelled.

In view of the foregoing terms of the 1923 lease to Hawaiian Pineapple Company and in view of the facts existing at the time it was negotiated the question now is: "What would be [607] the status of Waialua Company if Eliza Christian's assent to the 1905 lease were now cancelled?"

The Petitioner has elected to ratify and affirm the lease of 1923. By so doing her undivided share and acreage of the Holt Estate lands remains un-

disturbed so far as the use thereof by Hawaiian Pineapple Company since 1923 and to 1940 is concerned. Moreover, there is no evidence whatsoever in this case that either Waialua Company or Hawaiian Pineapple Company have ever recognized Eliza Christian as even a possible paramount title holder; nor is there any evidence that Hawaiian Pineapple Company (even if possible) has ever requested or consented to the construction of this covenant in its favor so as to permit Waialua Company to decide to vary the POSSESSION by letting Eliza Christian into physical possession of an undivided interest. In fact Waialua Company through the Pineapple Company and others, HAS BEEN AND STILL IS in exclusive possession of all this area since April 10, 1922. There is no evidence to the contrary. Further, Eliza Christian thru her attorneys is not intervening AGAINST HAWAIIAN PINEAPPLE COMPANY but is leaving that Company undisturbed by reason of the unequivocal election to ratify and affirm the lease. [608]

To refuse to cancel the assent of Eliza Christian to the 1905 lease to Waialua Company would mean that Waialua Company would thereby be permitted to retain in its own hands and control both the land and the reasonable value of property rights belonging to an imbecile, MERELY on the basis that the imbecile's signature appeared without consideration of the document executed by her predecessors in title nearly twenty (20) years before. No other hardship is indicated than is always present

when a co-tenant receives value for property that did not belong to it. There is no evidence that the basic value of Waialua Company's own interest in the pineapple area was or would be in any way affected by the determination of co-tenancy, other than by accounting for what it did not own.

If the 1905 and 1906 instruments be cancelled as to Eliza Christian, then Waialua Company would have had no right in equity in 1923, to lease to Hawaiian Pineapple Company the undivided interest of the imbecile unless she ratified this action by her co-tenant. However, by the election on behalf of the imbecile to ratify this lease, no right of Hawaiian Pineapple Company, Lessee, is interfered with so that no new obligations are or [609] would be created against Waialua Company in favor of Hawaiian Pineapple Company. The only result would be that Waialua Company would have to disgorge the reasonable value received by it for property rights belonging to the imbecile. That is to say equity would only be granting the imbecile the fair proportionate value of what belonged to her as a co-tenant. Without cancellation, equity would be giving away as of 1922, the property rights of the imbecile merely because in 1905 she was not intelligent enough to protect herself. By exercising the right of election to affirm the lease, Petitioner has made it possible to restore status quo as it would have been if Waialua Company as a co-tenant, had, without any documentary basis whatsoever, mistakenly or otherwise, leased to Hawaiian Pineapple

Company property which did not belong to Waialua Company. Upon discovery of the fact Waialua Company has been put in a position to cause no detriment to the Pineapple Company, affecting the cash parted with by the Pineapple Company, upon condition that Waialua Company merely transfer to the rightful owner the proportionate value received by it for the undivided interest which it did not own. The Hawaiian Pineapple Company, as Lessee, is confirmed in any possession and rights under [610] the lease of 1923, so that it is in no way concerned with the issues of this proceeding. Cancellation simply informs Waialua Company that cash received by it for what it did not in equity own must be transferred over to the rightful owner. In no way are its own rights interfered with. This sort of result is a necessary factor in every cancellation involving cash substitution for rights erroneously attempted to be transferred.

Approximately six thousand four hundred seventy-six and $43/100$ (6,476.43) acres of Holt estate lands were available for pineapple cultivation. A cancellation of the documents involved in this proceeding so far as Eliza Christian's interest is concerned, leaves Waialua Company still the owner in fee of sixteen twenty-sevenths ($16/27$ ths) undivided interest in this area, and Lessee of two-twenty-sevenths ($2/27$ ths), or a total of two-thirds ($2/3$ ds). In the decision of August 9, 1929, it was indicated that Petitioner's share in the paid-up rentals was a matter of pure mathematical computation, to-wit:

Three Hundred Seventy Four Thousand Seven Hundred Sixty and 36/100 Dollars (\$374,760.36). In addition to the foregoing paid-up [611] rentals from the Hawaiian Pineapple Company referable to Petitioner's undivided interest, the record shows that Waialua Company had received further cash rentals between the date of the death of John D. Holt in 1922, and the Hawaiian Pineapple lease on January 1, 1923, in the proportionate sum of Twelve Thousand Three Hundred Thirty Three (\$12,333.00) Dollars. In other words Waialua Company had in cash ON JANUARY 1, 1923, Three Hundred Eighty Seven Thousand Ninety Three and 36/100 (\$387,093.36), representing a proportionate share of cash referable to the Eliza Christian one-third (1/3d) interest to and including June 30, 1940. The Court has looked in vain in the record for any equitable reason why an imbecile should be denied this compensation as the uncontradicted reasonable value for the use of her lands under the ratified lease. The only fact in the record is, when the testimony is really sifted, that the imbecile without any competent ability to protect herself, assented in 1905 without any present consideration, to a transfer to Waialua Company of the right to deal with lands until 1930. The Waialua Company released this portion of the lands under a lease protecting its improvements. Petitioner has elected to ratify [612] this 1923 lease.

In view of the facts (1) that the foregoing reasonable value of Petitioner's interest is a mere

matter of mathematical division according to proportionate interests; (2) that the major part of said sum was the present cash value in 1923 at five (5%) percent discount of rentals spread over seventeen and one-half ($17\frac{1}{2}$) years; (3) and the provision of the mandate that Petitioner return the original consideration of the 1910 deed (which she never received) at six (6%) percent interest, this Court is of the opinion and so finds, that six (6%) percent interest for the use of said cash is a reasonable equivalent for the method of attempting to compute the annual rental value up to the demand of April 5, 1928, plus, the present value of the remaining installments of the annual rental covered by the ratified lease and the total at eight (8%) percent legal interest. (All of the foregoing values of pineapple rentals are based on computations net above taxes.)

In the testimony at the 1929 hearing it appeared that Waialua Company immediately invested these cash rentals (under the 1923 paid-up lease) in Hawaiian Pineapple Company stock. Petitioner sought to obtain a proportionate share of this investment. Waialua Company objected on the ground that this was personal to it. This objection was sustained. But the fact remained that the testimony showed that the cash rentals WERE INVESTED and were not lying idle. Money so used has a reasonable "use" value, even though the personal earnings of the investor over and above such reasonable "use" value should not be inter-

ferred with. It is difficult, therefore, under the evidence before the Court to see how six (6%) percent interest under the circumstances can be construed in any way as a "a penalty". There is no showing that the investor received less than six (6%) percent and the Court refused to consider whether the Company secured a larger return by reason of its own business ability.

As to the question of "ouster", the position taken by Waialua Company in 1923, and still persisted in, as exclusive owner of a "unified plantation" is a sufficient answer. It has never acknowledged Eliza as a lessor or in any other capacity. The law applicable is sufficiently analyzed in the former opinions of this Court. [614]

SUGAR LANDS.

Another argument against cancellation of the assent to the 1905 lease and the attempted assignment to Annie Kentwell of 1906, is based upon numerous details of improvements erected and maintained by Waialua Company in connection with the alleged unity of the sugar plantation development. This has been already referred to in part. It is further argued that rights under partition would leave in abeyance controversies as to the complete protection of Waialua Company in connection with improvements made in good faith. Most of the weight of such argument was originally directed against cancellation of the 1910 deed.

If by virtue of appropriate conditions imposed in this proceeding, reasonable and substantial pro-

tection can be secured to Waialua Company in connection with such improvements as are essentially tied up with the operation of the sugar plantation as a unit, then the obstacle to cancellation raised by Counsel for Waialua Company involving such improvements would disappear. If such conditions can be imposed in connection with a decree in this case, then any future partition suit, if the co-tenants desired severance of [615] interest, would be subject to the rights decreed in this proceeding. This Court is of the opinion that such conditions can be imposed herein, based upon the evidence.

On that assumption the question should be settled as to reasonable rental value of the proportionate interest of sugar lands used by Waialua Company but belonging to the Petitioner. This determination is not a mere mathematical computation but depends first on a determination in this proceeding of a basic reasonable rental value, net above taxes, per acre of sugar lands.

Throughout the hearings of 1929 and 1932 Waialua Company has strenuously objected to opening up its books in order to determine whether or not it operated the Holt sugar areas at a profit or a loss, taking into consideration all the alleged expenditures for development and including the question of the bearing of the cost of abandoned improvements on this question of actual profit or loss. Certainly, if investigation of the cost of operating the sugar lands would have shown that the use of the sugar lands resulted in a loss, those

factors would have been pertinent in connection with the determination of a reasonable rental value of sugar lands pertaining to the Eliza Christian one-third ($1/3d$) interest. [616] However, the Company objected to this line of investigation. In view of this objection, the Court sustained it and confined the evidence to the reasonable rental value of land suitable for sugar cultivation, net above taxes.

In view of the fact that the evidence was so confined at the instigation of the Company itself, it is a fair assumption and inference from the testimony and the position taken by the Company that it was able to operate Eliza Christian's undivided share in the sugar lands at a reasonable profit to itself, net above taxes, even on the basis of a reasonable ground rental chargeable to the Company. It must be kept in mind also, that a cancellation of the assent to the lease relieves the Company from any accounting for division of permanent improvements of buildings and fixtures placed by it on the lands prior to 1930. The testimony also showed that one of the reasons for the pineapple lease of 1923, whereby the areas above the Wahiawa Extension Ditch were leased to that Company on the basis of Fifteen (\$15.00) Dollars per acre per year, net above taxes, was because such a ground rental for such upper areas would be more profitable than to continue operation of any of the same in the sugar plantation. [617]

In 1929 this Court found under all the evidence, that for the years 1922 to 1929 inclusive, a net

rental of Fourteen (\$14.00) Dollars per acre per annum was a reasonable rental value of this land as cane land, (this did not include any value for rental of improvements or any interest in improvements, except as the land itself considered as cane area was cleared, ditched and made accessible). In arriving at this figure the Court, also, weighed the evidence relating to the original cost of clearing the land and making it accessible. Under the evidence added in the recent hearing, the continuance of this acre value is also in conformity with reasonable value. No additional evidence to vary this 1929 figure was offered by Waialua Company in the 1932 hearing.

That is to say the proportionate acreage used by the Waialua Company for sugar plantation purposes is hereby found to have a reasonable rental value as to Eliza Christian's interest in the sum of Seven Thousand Five Hundred Seventy-four (\$7,574.00) Dollars per annum, net above taxes, for each of the years from April 10, 1922, to the date of this decree. By eliminating interest [618] with annual stops, this Court feels that a simple annual computation will result in adequate adjustment of the equities of Waialua Company in connection with the original bringing in of this area to productivity, including dirt ditches and dirt roads. Conditions hereinafter imposed will, also, substantially protect the remaining equities of the Company by confirming to it the continuance in unified control, operation and maintenance of the major improve-

ments involved in connection with the essential unity of its sugar plantation.

A DIGRESSION RE "VOIDABLE" AND "VOID".

Before summarizing, in conclusion, the foregoing reasoning which has been based upon the Supreme Court's ruling that a deed of an imbecile is "voidable and not void", I desire, respectfully, to indicate for further reflection a logical difficulty that has presented itself in connection with such a ruling. In doing so this Court is mindful that its earlier decisions agreed with the Supreme Court of the Territory.

Does not logic suggest: Given an imbecile or insane person, his (or her) act which requires mental concurrence is VOID-IN-FACT for want of a contracting "mind"? Such a defect, [619] HOWEVER, DOES NOT APPEAR UPON THE FACE OF THE DOCUMENT OF CONTRACT OR CONVEYANCE. Therefore, so far as is apparent from legal record, the transaction proceeds as though legal-in-fact, unless and UNTIL a Court of Equity is induced to interfere by affirmative remedy. No proper person may ever come forward to disturb the legal appearances of the record; or the legal appearances may ripen into an impregnable position by limitation or laches.

When such affirmative interference is sought TO CORRECT LEGAL APPEARANCES TO CONFORM TO THE ACTUAL FACTS,—imbecility,

—insanity,—voidity,—the Court, appealed to, first asks: "Who is the person asking for relief?" If the imbecile in person (thru proper guardian or legal representatives) is asking for the remedy and no laches prevents the further inquiry, then questions affecting the respondent arise.

If the respondent is the substantial, original contracting party, the investigation is simplified. Was such party in a position to be apprised of the defect: (1) by the existence of a prior adjudication of insanity; (2) by actual knowledge of insanity, or of facts from which such could reasonably be inferred, or by actual [620] knowledge of the situation in some agent, used by said other contracting party? If either (1) or (2) is found to have existed, Courts of Equity have not hesitated to afford an immediate, affirmative remedy. If such facts do not CLEARLY appear, then the Courts have demanded further information to determine whether or not affirmative correction by decree (remedy) can be had and at the same time substantial justice result. This investigation involves the weighing of equities, restoration to status quo, etc., etc.

If this treatment is what is involved in a Court of Equity by the use of the terms "voidable" and "void", the result can be understood. Yet, even then, such terms so used lead to innumerable confusions. If "voidable" means "good until avoided", then "merger" of a lesser estate with a greater would seem to be a logical consequence, if the greater is an existing legal fact until avoided. If

"merger" does not result, THEN IT MUST BE BECAUSE THE GREATER NEVER WAS,—was void ab initio,—and the REMEDY or equity in announcing that fact faces the necessity of recognizing THAT NO VÁLID AGT EVER EXISTED WITH WHICH A FORMER contract could ever have merged. This, then, results in a further necessity to examine the [621] transaction out of which the earlier lesser estate arose, so far as the AP- PARENT legality is connected with the ACTUAL facts. The whole inquiry is immediately transferred to examine the earlier event, taking into considera- tion all that has happened in the meantime to intervening legal estates.

The earlier event is also a "voidity" in a factual sense, if imbecility existed in fact. But, do the cir- cumstances affecting it justify PRESENT EQUI- TABLE INTERFERENCE, (remedy to correct the appearance of legality), so as to bring about substantial justice? If the continuing, actual, legal, factual rights of the imbecile are NOW to be decreed, what would be the effect upon the other contracting party? Is there an overbalance of equi- table reasons to JUSTIFY A DENIAL of relief to an imbecile, who BY THE VERY PREMISE OF IMBECILITY, could not and cannot be protected except by the aid of others? Can conditions be imposed in connection with relief so as to accom- plish substantial justice? This unprejudiced play of human judgment is exactly the province of the Chancellor. [622]

CONCLUSION.

Whether or not a discussion of the documents in the case at bar should proceed from a rule of "voidity" or "voidability", it is the conclusion of this Court as expressed hereinbefore more fully, that the equities in the case at bar are in favor of ordering a cancellation of Eliza Christian's assent to the lease of 1905, of terminating the rights of bot Waialua Company and Eliza Christian thereunder, and cancelling Eliza Christian's execution of a purported assignment of rents to Annie Kentwell in 1906. Substantial adjustment of the status quo is possible under the facts.

The Court therefore finds in conformity with the foregoing reasons that in addition to the cancellation as to Petitioner, Eliza Christian of the May 2, 1910, deed, that:

(1) The instrument of August 31, 1906 and the assent of Eliza Christian to the lease of March 17, 1905, should be cancelled and annulled as to the Petitioner, Eliza Christian;

(2) In accordance with the election on behalf of Petitioner, the lease of Waialua Company to Hawaiian Pineapple Company, [623] Ltd., of January 1, 1923, should be and is ratified and confirmed insofar as it affects the undivided interest of Eliza Christian, Petitioner;

(3) The Respondent Waialua Company should account with the Petitioner for the sum of Three Hundred Eighty Seven Thousand

Ninety Three and 36/00 (\$387,093.36) Dollars, plus interest at six (6%) per cent per annum from January 1, 1923, as and for the reasonable value of rentals for use and occupation of pineapple areas to and including June 30, 1940; (from which should be deducted Thirty Thousand (\$30,000.00) Dollars plus interest at six (6%) per cent per annum from May 2, 1910);

(4) Waialua Company should account with Petitioner in the sum of Seven Thousand Five Hundred Seventy Four Dollars (\$7,574.00) per annum, (without interest up to the date of the decree of this Court), as and for the reasonable annual value for use and occupation of proportionate sugar areas commencing with April 10, 1922, to the date of the [624] final decree herein.

In connection with the foregoing cancellation and further, **IN CONNECTION WITH PERFORMANCE OF SAID ACCOUNTING BY RESPONDENT** Waialua Company, and for the purpose of setting at rest equities of the parties in connection with restoration of status quo, it is further found that such performance by Respondent, Waialua Company, should be and is hereby conditioned upon the requirement that the Petitioner through her guardian and for herself, her heirs and assigns, be taken thereby, to acquiesce in and insure to her co-tenant, Waialua Agricultural Company, Limited, its successors and assigns:

"A": The right, until partition or other severance be sought and decreed, to continue in the exclusive use and occupation so far as Holt areas are concerned:

(1) Of the existing site and improvement of the right-of-way of the Wahiawa Extension Ditch, (including tunnels, flumes, siphons in connection therewith), with a reasonable width for the maintenance of the same in and across the entire Holt area;

(2) The sites and improvements of all [625] existing reservoirs located at and above said Wahiawa Extension Ditch in connection with the Helémano irrigation system including therewith the sites of the intakes, main ditches, tunnels, flumes and siphons from said intakes to connect with the Wahiawa system as presently located, (or as reasonably adjusted to continue its substantial unity), and including MAIN outlet ditches to conduct irrigation waters over and across Holt areas;

(3) The existing sites and improvements of the Poamoho Pumps Nos. 10 and 10-A, together with the sites and improvements of main outlet pipe lines, main ditches, flumes, siphons and reservoirs now existing in connection therewith;

(4) The site and improvements of the existing MAIN plantation railroad and switches with the reasonable width in connection therewith so far as the same affects the Holt area;

(5) Rights of way and improvements for main power lines and transmission lines and for main pipe lines for domestic water [626] supplies;

(6) Sites and improvements of branch railroads now existing upon Holt areas;

(7) Plantation camp sites and improvements; (Petitioner's rights to rentals or joint occupation as tenant in common being confined to area basis without reference to the value of the foregoing improvements).

"B": That, upon partition and/or other severance of interest between Petitioner and Respondent Waialua Company, the said Waialua Company, its successors and assigns as against Petitioner, her heirs and assigns, be likewise insured, BY PERFORMANCE OF THE WITHIN DECREE, of the right in it or them of an election to have allocated to it or them, in its share of areas any or all of the sites of the improvements listed in subparagraphs (1), (2), (3), (4), and (5) hereinabove, said allocation to be adjusted with Petitioner, her heirs and assigns, solely on an equivalent area basis without any right in or reference to the value of the improvements so located; and where such division to Petitioner, her heirs or assigns may affect structures on fixtures in connection with [627] improvements listed under subparagraphs (6) and (7), the adjustment of the same to be made on the basis of a right in Respondent Waialua Company, its successors or assigns to remove the same or

to be compensated on the then fair appraisal, (allowing for the then condition of deterioration as may then appear equitable), wherever any of the same be necessarily located on any areas allocated to Petitioner, her heirs and assigns.

"C": In connection with such exclusive use of such improvements and election as hereinbefore provided and conditioned, the Petitioner, her heirs and assigns shall retain the privilege of having reasonable rights of way for access and egress over, across or under any sites reserved to Waialua Company, its successors and assigns.

"D": All other matters of adjustment, not specifically dealt with herein, shall in the event of future partition and/or severance be left to equitable adjustment on the plain intent of this decision and a decree hereunder that Petitioner is hereby found to be entitled to restoration to an undivided fee simple interest in one-third (1/3d) of the area of the [628] lands as described in these proceedings, according to the proper agricultural or other appropriate classification of said areas, but without right in the Petitioner, her heirs or assigns to any claim for special value in connection with the improvements hereinabove listed under sub-paragraphs (1) to (7) inclusive.

This is not "making a new contract" between the parties. In reality it is the necessary result of affording equitable protection to the Respondent, Waialua Company, in connection with its activities resulting from dependence on supposed contractual rights which this Court is compelled to find against

said Company by reason of the necessity to afford protection to a person found to have been at all times hereunder a "congenital imbecile."

By such a final determination of the issues between Petitioner and Respondent Waialua Company, (so far as is possible under pending pleadings), substantial protection will be accorded to the Petitioner by restoration of her undivided one-third (1/3d) interest in the lands in question and by a reasonable [629] compensation for exclusive use of the same by her co-tenant. At the same time the rights of the Waialua Company will be substantially protected as to the Petitioner, since the equitable principles affecting its co-tenancy will be substantially settled. Waialua Company will have assured to it:

(1) A substantial protection of the unity of its sugar plantation;

(2) Undisturbed possession and usefulness of approximately One Million Dollars (\$1,000,000.00) of investment claimed by it in connection with the improvements affecting the continued operation of ninety-five percent (95%) of its sugar plantation until severance;

(3) The retention by it of such profits as it may have created in connection with the use of sugar areas over and above a reasonable ground rental for Petitioner's undivided interest;

(4) Protection in its investments in Hawaiian Pineapple Company which are dependent upon the continuance of the 1923 lease; [630]

(5) A settlement herein of the equitable principles applicable to the Petitioner as a co-tenant so as to preserve to Waialua Company the continued substantial unity and effectiveness of such permanent improvements as have been developed by it in connection with its sugar plantation in the event that a future severance of proportionate areas should be found desirable between the co-tenants.

All of the foregoing adjustments between Petitioner and Respondent Waialua Company are without prejudice to the rights of said Company as against the Respondents Annie Holt Kentwell and James L. Holt, or their heirs.

In conformity with the foregoing decision a decree will be signed upon presentation in favor of said Petitioner as to cancellation of the documents in question and for an accounting computed as herein determined subject to the conditions of settlement of the equities between the Petitioner and Respondent Waialua Company as herein set forth.

Dated at Honolulu, Hawaii, this 18th day of August, 1932.

[Seal]

A. M. CRISTY,
Second Judge, First Judicial Circuit,
Territory of Hawaii. [631]

In the Circuit Court of the First Judicial Circuit
Territory of Hawaii.

Eq. 1915

R. P.

At Chambers

In Equity

Bill for Cancellation, Accounting and Incidental
Relief.

ELIZA R. P. CHRISTIAN, an incompetent person,
by HERMAN V. von HOLT, her Guardian,
Petitioner,

v.

WAIALUA AGRICULTURAL COMPANY, LIM-
ITED, an Hawaiian corporation, JAMES L.
HOLT, and ANNIE HOLT KENTWELL,
Respondents.

DECREE.

1st Circuit Court, Territory of Hawaii, filed 1932,
Sept. 6, P. M. 1:53 D. K. Sherwood, Clerk. [632]

Pursuant to and confirming the Decision on Re-
mand of this Court heretofore made and entered
herein on, to-wit, August 18, 1932,

IT IS HEREBY ORDERED, ADJUDGED
AND DECREED:

1. That that certain deed dated May 2, 1910,
by and between John Dominis Holt, Eliza R. P.
Christian, Annie Holt Kentwell and Lawrence K.
Kentwell, therein named as Grantors, and James L.
Holt, therein named as Grantee, said deed being
described and referred to in the Amended Petitions

on file herein, a copy of which deed being annexed to said Amended Petitions and made a part thereof, and marked [633] "Exhibit B," be and it is hereby declared and adjudged canceled, annulled, and void and of no effect as to Eliza R. P. Christian named as Grantor therein, being the same Eliza R. P. Christian petitioner herein.

2. That, as against all parties personally appearing herein and submitting to the jurisdiction of this Court herein, to-wit, Waialua Agricultural Company, Limited, James L. Holt, and Annie Holt Kentwell, the said Eliza R. P. Christian is and has been since April 10, 1922 the owner in fee simple of an undivided one-third ($1/3$) interest in and to the following described property:

(a) A portion of the Ahupuaa of Paalaa being a portion of Apana 34, L. C. A. 7713, Royal Patent 4475, containing an area of 12018.81 acres more or less;

(b) The lands described in Royal Patent 973 to Robinson et al, containing an area of 1902 acres;

(c) The lands described in Royal Patent 431 to Kanohanui, containing an area of 100 acres;

(d) The lands described in Royal Patent 235 to Jerome and Louis Johnson, and Topliff, containing an area of 36 acres;

(e) The lands described in Royal Patent 238 to J. F. Anderson and F. Davis, containing an area of 25.8 acres;

(f) All kuleanas or grants lying within the above described land.

3. That Petitioner herein, as tenant in common of said land with Waialua Agricultural Company, Limited, since April 10, 1922, do have and recover from said respondent, Waialua Agricultural Company, Limited, (1) as past and future rentals for Petitioner's interest in the pineapple lands described [634] in that certain lease (dated January 10, 1923) by and between Waialua Agricultural Company, Limited and Hawaiian Pineapple Company, Limited (being Exhibit AcB1, in this case), said lease expiring July 1, 1940, and, (2) as and for rentals upon all other lands hereinabove described, as of the date of this decree, the total sum of \$606,785.75; payment of the foregoing sum together with any other sums included in this decree, to be made to the duly appointed and acting guardian of the Petitioner herein;

4. That, better to effectuate this decree, the Respondent, Waialua Agricultural Company, Limited, do deliver up to the Clerk of this Court, for cancellation as to Petitioner herein, the original of that certain deed of May 2, 1910, hereinabove referred to, and for endorsement thereon by said Clerk,

"The above and foregoing deed of May 2, 1910, is hereby canceled, annulled and void as to Eliza R. P. Christian named as Grantor therein, by reason of the incompetency of said Eliza R. P. Christian, By Order of the Court under

Decree in the Circuit Court of the First Judicial Circuit, Territory of Hawaii, in Equity 2915, said Decree being dated.....

.....
Clerk."

And, further, that Respondent, Waialua Agricultural Company, Limited, by appropriate indenture do release and forever quitclaim unto the said Eliza R. P. Christian, Petitioner, herein, all of the right, title and interest in an undivided one-third ($\frac{1}{3}$) interest in fee in the said lands, referred to in paragraphs 2-a, b, c, d, e, and f, hereinabove, purported to have been conveyed and granted by [635] the Petitioner herein by virtue of said deed of May 2, 1910;

5. That Petitioner herein, having accepted, ratified and adopted that certain lease by and between Waialua Agricultural Company, Limited, and Hawaiian Pineapple Company, Limited, dated January 10, 1923, as above referred to in paragraph 3 hereof, the rights of said Hawaiian Pineapple Company, Limited under and by virtue of said lease are in all respects confirmed as to Petitioner's interest in said lands;

6. That that certain lease dated March 17, 1905 by and between Carlos A. Long et al and Waialua Agricultural Company, Limited, et al, said lease being described and referred to in the Second Amended Petition on file herein, a copy of which lease being annexed to said Second Amended Petition

and made a part hereof and marked "Exhibit F," is hereby declared and adjudged cancelled, annulled, and void and of no effect as to said Eliza R. P. Christian, and the assent of Eliza R. P. Christian thereto is hereby annulled and decreed of no force or effect;

7. That that certain instrument of August 31, 1906, by and between Eliza R. P. Christian and Annie Holt Kentwell, said instrument being described and referred to in the Second Amended Petition on file herein, a copy of which instrument being annexed to said Second Amended Petition, made a part thereof, and marked "Exhibit G," be and it is hereby declared and adjudged canceled, annulled, and void and of no effect.

8. That Respondent Waialua Agricultural Company, Ltd., subject to its performance of this decree, be and it is [636] hereby decreed the right, until partition or other severance be sought and decreed, to continue in the exclusive use and occupation so far as said lands are concerned:

(1) Of the existing site and improvement of the right-of-way of the Wahiawa Extension Ditch, (including tunnels, flumes, siphons in connection therewith), with a reasonable width for the maintenance of the same in and across the entire Holt area;

(2) The sites and improvements of all existing reservoirs located at and above said Wahiawa Extension Ditch in connection with the Helemano irrigation system including there-

with the sites of the intakes, main ditches, tunnels, flumes and siphons from said intakes to connect with the Wahiawa system as presently located, (or as reasonably adjusted to continue its substantial unity), and including main outlet ditches to conduct irrigation waters over and across the Holt areas;

(3) The existing sites and improvements of the Poamoho pumps Nos. 10 and 10-A, together with the sites, and improvements of main outlet pipe lines, main ditches, flumes, siphons, and reservoirs now existing in connection therewith;

(4) The site and improvements of the existing main plantation railroad and switches with the reasonable width in connection therewith so far as the same affects the Holt area;

(5) Rights of way and improvements for main power lines [637] and transmission lines and for main pipe lines for domestic water supplies;

(6) Sites and improvements of branch railroads now existing upon Holt areas;

(7) Plantation camp sites and improvements; (petitioner's rights to rentals or joint occupation as tenant in common being confined to area basis without reference to the value of the foregoing improvements.)

That, upon partition, and/or other severance of interest between Petitioner and Respondent Waialua

Company, the said Waialua Company, its successors and assigns as against Petitioner, her heirs and assigns, be likewise insured, by performance of the within decree, of the right in it or them of an election to have allocated to it or them in its share of areas any or all of the sites of the improvements listed in sub-paragraphs (1), (2), (3), (4), and (5) hereinabove, said allocation to be adjusted with Petitioner, her heirs and assigns, solely on an equivalent area basis without any right in or reference to the value of the improvements so located; and where such division to Petitioner, her heirs or assigns may affect structures or fixtures in connection with improvements listed under sub-paragraphs (6) and (7), the adjustment of the same to be made on the basis of a right in Respondent Waialua Company, its successors or assigns, to remove the same or to be compensated on the then fair appraisal, (allowing for the then condition of deterioration as may then appear equitable), wherever any of the same be [638] necessarily located on any areas allocated to Petitioner, her heirs and assigns.

In connection with such exclusive use of such improvements and election as hereinbefore provided and conditioned, the Petitioner, her heirs and assigns shall retain the privilege of having reasonable rights of way for access and egress over, across or under any sites reserved to Waialua Company, its successors and assigns.

All other matters of adjustment, not specifically dealt with herein, shall in the event of future partition and/or severance be left to equitable adjustment on the plain intent of the decision and of this decree hereunder that Petitioner is hereby found to be entitled to restoration to an undivided fee simple interest in one-third of the area of the lands as described in these proceedings, according to the proper agricultural or other appropriate classification of said areas, but without right in the Petitioner, her heirs or assigns to any claim for special value in connection with the improvements hereinabove listed under sub-paragraphs (1) to (7) inclusive.

9. That this decree is granted without prejudice to such rights, if any, as said Respondent Waialua Agricultural Company, Limited may have against any persons other than said Eliza R. P. Christian, including Respondents Annie Holt Kentwell and James L. Holt, or their heirs.

10. The foregoing decree being without prejudice also to the right of the petitioner to any further or subsequent accounting arising out of facts subsequent to [639] the date of this decree relating to any exclusive occupation on an area basis, without right of any accounting for the improvements herein allocated to the Respondents.

11. That Petitioner do further have and recover of and from the Waialua Agricultural Company, Limited the sum of \$862.70 as per Order taxing costs herein.

Dated at Honolulu this 6th day of September,
A. D. 1932.

BY THE COURT,

[Court Seal] DOROTHY M. FEDER,
Clerk.

Approved:

[Seal] A. M. CRISTY,
Presiding Judge [640]

SATURDAY, OCTOBER 31, 1931.

At Chambers—10:00 o'clock a. m.

Present:

The Court—Olaf Oswald, Reporter.

Counsel:

C. M. Hite, Esq., (UH), for Petitioner.

B. S. Ulrich, Esq., (UH), for Petitioner.

A. L. Castle, Esq., (RC), for Waialua Agricultural Co., Ltd.

J. G. Anthony, Esq., (RC), for Waialua Agricultural Co., Ltd.

A. Withington, Esq., (RC), for Waialua Agricultural Co., Ltd.

John R. Desha, Esq., for James L. Holt.

MOTION FOR ALLOWANCE OF AMENDMENTS TO PLEADINGS.

Mr. Castle presented to the Court and counsel written objections to the allowance of the proposed amendment and to the allowance of the proposed

second amended bill and further stated that any appearance in the future would have to be subject to the objections which were filed with the Court.

**ELIZA R. P. CHRISTIAN vs. WAIALUA AGRI.
CO., LTD.—E-2915—Page #3.**

Mr. Ulrich informed the Court that he wished to present at this time the allowance of an amended petition pursuant to the direction or authorization given by the Supreme Court in a decision recently rendered in this case.

Mr. Castle renewed his objections.

The Court, after reading the mandate, overruled the objections of counsel for respondent, Waialua Agricultural Company, Ltd., and allowed the amended bill. The Court allowed the respondents ten (10) days within which time to plead by way of answer, demurrer or any other pleading.

BY THE COURT

L. R. HOLT

Clerk [641]

FRIDAY, NOVEMBER 6, 1931.

At Chambers—10:00 o'clock a. m.

Present:

The Court.

Counsel:

C. M. Hite, Esq., (UH), for Petitioner.

**MOTION FOR ORDER OF SERVICE OF
PROCESS ON ANNE HOLT KENTWELL.**

On ex parte motion by the petitioner thru her attorneys for an Order of Service of Process on

the respondent Anne Holt Kentwell, a non-resident, the Court granted the motion and order in the form presented with the understanding that this fixing of a day for trial in response to the statute for notice shall and will not prejudice the rights of the Waialua Agricultural Company, Ltd. but is for the purpose of fixing a specific date on which Anne Holt Kentwell must appear or be in default and that the date set—December 17th, 1931—shall be the date of trial on the matter upon the proper motion of parties interested.

BY THE COURT

L. R. HOLT

Clerk.. [642]

ELIZA R. P. CHRISTIAN vs. WAIALUA AGRICULTURAL CO., LTD.—E-2915 Page #4
Cont.

TUESDAY, NOVEMBER 17, 1931:

At Chambers—2:00 p. m.

Present:

The Court:

Counsel:

Same.

SPECIAL DEMURRER—OVERRULED.

2:00 p. m. Counsel Anthony argued.

2:31 p. m. Counsel Ulrich argued.

2:53 p. m. Counsel Anthony argued.

3:05 p. m. the Court made a statement.

The Court after hearing the argument of Counsel overruled the Special Demurrer, giving Counsel for

Respondent up to and including the 17th of December to answer; and further stated that any other pleadings other than by way of answer be filed in this Court not later than the 28th of November, and the time for answer be the 17th of December.

Counsel for Respondent, Waialua Agricultural Co. Ltd., took exception to the Court's ruling.

BY THE COURT

D. M. FEDER

Clerk. [643]

MONDAY, NOVEMBER 23, 1931.

At Chambers—10:00 a. m.

Present:

The Court.

Counsel:

Same.

MOTION FOR COMMISSION TO TAKE
DEPOSITIONS—DENIED.

10:00 a. m. Counsel Castle argued.

10:00 a. m. Counsel Ulrich argued.

10:34 a. m. the Court questioned Counsel Ulrich.

10:40 a. m. Counsel Castle made his closing argument.

The Court after hearing argument of Counsel denied the Motion. The Court made a definite ruling stating that the ruling was binding upon further hearings of the Court, to the effect that the issue of Eliza Christian's competency or incom-

petency is not before this Court at this stage of the hearing, and the Court would have to deny examination of any witnesses appearing upon her alleged competency or incompetency.

The Court allowed Counsel for Petitioner a week to file such affidavits as they may deem necessary in answer to Mr. Castle's affidavit.

Counsel for Respondent was given until noon of the 24th of December, 1931, to complete the records in connection with his (Mr. Castle's) motion and affidavits.

BY THE COURT.

D. M. FEDER

Clerk [644]

ELIZA R. P. CHRISTIAN vs. WAIALUA AGRI.
CO. LTD.—E-2915—Page #5.

FRIDAY, JANUARY 8, 1932.

At Chambers—10:00 a. m.

Present:

The Court. (H. R. Jordan—Reporter)

Counsel:

Messrs.—Ulrich, Hite, Castle and Anthony.

**MOTION FOR COMMISSION TO TAKE
DEPOSITIONS.**

Upon hearing the statements of Counsel the Court denied the Motion for Commission to Take Depositions, with the exception of that of Annie Kentwell which matter the Court stated, would be taken up

when Mrs. Kentwell's answer is before the Court; Counsel Ulrich having stated to the Court that Mrs. Kentwell's answer had been executed personally in England and is now in the mails.

Counsel for Respondent took exception to the Court's ruling.

BY THE COURT: .

D. M. FEDER

Clerk. [645]

THURSDAY, JANUARY 21, 1932.

At Chambers—1:35 p. m.

Present:

Hon. A. M. Christy, Second Judge, presiding.

D. M. Feder, Clerk.

J. R. Jordan, Reporter.

[Title of Cause.]

ARGUMENT ON THE TAKING OF
DEPOSITIONS.

Counsel:

B. Ulrich, Esq., (U&H) and C. M. Hite, Esq.,
(U&H) for Petitioner.

A. L. Castle, (R&C) for Respondent Waialua
Agri. Co., Ltd.

Counsel Ulrich and Counsel Castle argued on the taking of deposition of Annie Kentwell; Counsel Ulrich arguing for a closed deposition, and Counsel Castle arguing against such a deposition and in favor of an open deposition.

After hearing the argument of Counsel, the Court stated that a closed deposition would be permitted under proper interrogatories, and allowed Mr. Castle a week's time in which to decide upon the matter.

BY THE COURT:

D. M. FEDER

Clerk. [646]

⑨
[Title of Court and Cause.]

OPINION OF THE COURT.

Filed May 3, 1934 at 10:25 o'clock a. m. (s) Robert Parker, Jr., Clerk Supreme Court. [647]

Argued April 28, 29, 1933. Decided May 3, 1934.

PERRY, C. J., BANKS AND PARSONS, JJ.
EVIDENCE — ADMISSIBILITY — AMEND-
MENTS TO PLEADINGS—NEW ISSUES.

Amendments to a bill and to an answer having been permitted after the close of the evidence, held, that these amendments presented new and distinct issues not raised by the original pleadings and that, under the circumstances it was error to exclude evidence offered by the respondent in support of the averments of the amendments to its answer.

DEEDS—VALIDITY—MENTAL INCOMPETENCY—EQUITIES.

The deed or contract of a mentally incompetent person, who has not been judicially declared insane and whose incompetency is unknown to the other party to the transaction, is not absolutely void but is voidable only; and in determining whether it should be canceled the [648] nature of the transaction in all its aspects and the good or bad faith of those dealing with the grantor in respect to such transaction should be carefully considered.

SAME—CONSIDERATION OF EQUITIES.

A deed, lease or other instrument executed by one mentally incompetent is not to be canceled solely because the person was incompetent but in determining whether it should be canceled all of the equities must be considered, including those in favor of the grantee or lessee as well as those in favor of the grantor or lessor.

INSANE PERSONS—LEASE CANCELLATION—EQUITIES—RESTORATION TO STATUS QUO.

A lease made by an incompetent, who has not been judicially declared insane, to a lessee without knowledge of the incompetency, for an adequate rental and upon other terms that are reasonable and fair, which is beneficial to the incompetent and is in effect a provision in

favor of the incompetent for necessities for his sustenance and comfort,—a lease which has been fully performed and is accompanied by no fraud or other circumstances of inequity to the incompetent—should not be canceled, even though the lessee can be restored to the status quo ante.

DEEDS—CONSTRUCTION.

If an instrument is susceptible of two constructions, one leading to validity and the other leading to invalidity, it should be given the construction which leads to [649] validity,—in order thereby to carry out the intention of the parties.

DEEDS—GIFT OF INCOME—CONSTRUCTION—EXCEPTION.

The rule that a gift of income of property is to be construed as a gift of the property itself is subject to the exception that if in the instrument under consideration it appears that the testator or grantor did not intend a conveyance of the land or of an interest in it there is no such conveyance.

SAME—INSANE GRANTORS—REMOTE GRANTEES—VALIDITY.

When an incompetent conveys or assigns to one who has knowledge of the incompetency and subsequently the grantee or assignee conveys or assigns to a third person who has no knowledge of the incompetency of the first grantor or assignor, the property passes to the inno-

cent third person freed from the taint which it received by reason of the guilty knowledge of the first grantee or assignee.

SAME—INSANE PERSONS—CANCELLATION—RESTORATION TO STATUS QUO.

Upon decreeing cancellation of a deed executed by a mentally incompetent grantor, restoration to the status quo should be accomplished in the same suit, if practicable, and should not be left for consideration and treatment in a possible future partition suit. [650]

OPINION OF THE COURT BY PERRY, C. J.
(Banks, J., dissenting.)

For earlier history of this case see *Christian v. Waialua Agricultural Co.*, 31 Haw. 817-912.

Subsequent to the order of this court remanding the case to the circuit judge for further proceedings, application was made by the petitioner before the circuit judge for leave to amend the petition by adding allegations to the effect that at the time when Eliza Christian executed the lease of March 17, 1905, and the instrument of August 31, 1906, she was mentally incompetent to execute those instruments, received no consideration for either of them and was not in any way benefited by their execution; and that both instruments were wholly void and should be set aside. Objections to the allowance of these amendments were presented by the respondent, the Waialua Agricultural Company, Limited, hereinafter referred to as the W. A. Co., and were over-

ruled. The W. A. Co. (it was the only one of the respondents which offered any resistance to the granting of the prayer of the petition) demurred to the petition as amended and subsequently filed an answer in which it claimed in effect that neither on March 17, 1905, nor on August 31, 1906, was Eliza mentally incompetent to execute those instruments, that she received adequate consideration for each of them, that they were beneficial to her and in her interest and that they ought not to be canceled. Subsequently the W. A. Co. offered to produce evidence tending to show that on March 17, 1905, on August 31, 1906, and on May 2, 1910, the latter being the date of the deed which by former order of this court was to be cancelled, Eliza was mentally competent to execute each such instrument. In various ways it made [651] this offer and there can be no doubt that it presented to the lower court and preserved for the consideration of this court the question whether it was entitled to produce further evidence on the subject of the mental competency of Eliza to execute each of the three instruments referred to.

In so far as the deed of May 2, 1910, is concerned, it is clear that no error was committed by the trial judge, in these proceedings on remand, in refusing to admit further testimony or other evidence on the subject of Eliza's mental competency on the date of the execution of that deed. At the original trial about 116 witnesses testified, pro and con, on this issue. At that time both parties had their day in court on that subject and made very extensive use

of the opportunity thus afforded them for presenting evidence in support of their respective claims. That evidence received very careful consideration at the hands of this court on the first appeal and a finding was then made with reference to the mental condition of Eliza, to-wit, that she was a congenital imbecile. There must be an end to litigation. The respondent, as well as the petitioner, had ample opportunity to procure and present its evidence of mental competency with reference to the execution of the deed of May 2, 1910, and no reason, either of law or of justice, occurs to us why a second opportunity, with reference to that deed, should be given to the respondent. The finding that on May 2, 1910, Eliza was a congenital imbecile and incompetent to execute the deed of that day is reaffirmed.

The question of the admissibility of the testimony of mental competency, when considered with reference to the lease of 1905, and to the instrument of 1906, did not stand upon precisely the same state of facts. If there was error in the exclusion of [652] the offered testimony in so far as it related to Eliza's mental condition on March 17, 1905, and on August 31, 1906, it was not the error of the trial judge. He construed correctly the order of remand made by this court. It was our understanding and intention in making that order that the finding of mental incompetency, of congenital imbecility, was not to be reopened or disturbed by the circuit judge upon the proceedings on remand even when considering whether those two earlier

instruments or either of them should be cancelled. If there was error, it was the error of this court in thus restricting the issues for the trial on remand. We think that we did err in that respect. As expressly held in the former opinion, neither the lease of 1905 nor the instrument of 1906 was a subject of contention between the parties at the original trial. It is true that there was an allegation in the petition that on March 17, 1905, Eliza was mentally incompetent to execute the lease of that day but that was followed by an express statement that "relief in equity against said lease need not be and cannot be herein prayed for, respondent's sole claim of right to the said lands being now based upon the said deed of May 2, 1910", and in its answer the respondent expressly accepted that statement as correct, that relief in equity against the lease could not be prayed for or had. It cannot correctly be said that the lease of 1905 was in issue at the original trial when both parties expressly represented to the court and to each other in their pleadings that that lease was not in issue. The prayer was for the cancellation of either the lease or the instrument of 1906. When, therefore, under these circumstances, the petitioner was permitted by amendment to put the two earlier instruments in issue, [653] it followed as a correlative and necessary right on the part of the respondent that it should be permitted not only to file an answer with respect to the new allegations but also to defend with evidence against the new prayer for the cancellation

of the two instruments and the new charge that Eliza was mentally incompetent at their respective dates to execute them. It is true that a very large number of witnesses, as above stated, had already testified on the subject of Eliza's condition of mind but her condition on March 17, 1905, and on August 31, 1906, not being among the ultimate things involved the respondent might well have been led not to make any search for evidence relating to her condition on those two particular dates. The respondent's offer was not only to introduce evidence of Eliza's mental condition on the two earlier dates but it was also to present the testimony of one or more experts to the effect that the degeneracy in congenital imbecility grows with the lapse of time. In other words, the offer was to prove that Eliza's mental condition in 1905 and 1906 was not as weak or insufficient as it was in 1910, even assuming that she was incompetent in 1910. There may be, on the part of the members of the court who examined the evidence on the original trial, a temptation to believe that in spite of any new evidence to be adduced their conclusion concerning the degree of Eliza's imbecility would not be affected thereby. Nevertheless the court should not venture any such surmise. The evidence was offered and in our opinion the respondent should have been given an opportunity to present it,—with reference only to its effect on the lease of 1905 and the instrument of 1906.

For other reasons, however, which are about to be stated, this error in the exclusion of evidence was

not prejudicial to the respondent. It may be assumed for the purpose of this phase of the case that on March 17, 1905, and on August 31, 1906, Eliza was [654] an imbecile and mentally incompetent to execute either of those instruments. In our former opinion it was held, after careful consideration, that the better view of the law is that the deed or contract of a mentally incompetent person, who has not been judicially declared insane and whose incompetency is unknown to the other party to the transaction, is not absolutely void but is voidable only and that "in determining whether it should be canceled the nature of the transaction in all its aspects and the good or bad faith of those dealing with the grantor in respect to such transaction should be carefully considered." (31 Haw. 888.) In other words, a deed, lease or other instrument of one mentally incompetent is not to be canceled solely because the person was incompetent but in determining whether it should be canceled all of the equities must be considered, including those in favor of the grantee or lessee as well as those in favor of the grantor or lessor. In the case at bar, as already held, while Eliza was an imbecile and mentally incompetent the W. A. Co. had no knowledge of that incompetency at the time that it dealt with her in 1910. The same must necessarily be true as of 1905 and 1906. Eliza had not been judicially declared incompetent. What are the other surrounding circumstances affecting the lease? Eliza was not the only lessor. Other lessors were

Carlos A. Long, as administrator of the estate of R. W. Holt, Robert L. Colburn, George H. Holt, Edward S. Holt, Helen A. Holt, individually and as guardian of her minor children, Elizabeth K. Richardson and the Hawaiian Realty & Maturity Company, a corporation, acting by its president and its secretary. Still other parties (of the third part) were John F. Colburn and James Lawrence Holt. All of these other parties to the lease, except the children of Helen Holt, were of age and in every way competent [655] to transact their own business affairs and to enter into this contract. The negotiations for the lease were instituted by John F. Colburn, a business man who had some interest in the matter in the capacity of a trustee, by Carlos A. Long, who was an attorney at law, and by C. W. Ashford, also an attorney, who served for some years as one of the judges of the circuit court of the first circuit. Mr. Ashford acted in the matter as attorney for John F. Colburn and perhaps others of the parties lessor. In the evidence there is to be found no reflection whatever upon the mental capacity, the integrity or the business ability of any of the parties lessor other than Eliza. The assumption must be that they were all competent and faithful as well, at least, as ordinarily keen business men. The lease was for a term of twenty-five years from April 1, 1905, and the total rent was at the rate of \$9000 per annum for all twenty-seven twenty-sevenths undivided interests in the lands that were being demised (the W. A. Co. at that time owned a

small undivided interest in the lands). The precise terms which were incorporated in the lease were largely if not wholly of the seeking of those who negotiated on behalf of the lessors. They were satisfactory to every one of the competent lessors. Not a word of evidence has been introduced in this case tending to show that the terms secured by the lessors were not the most favorable that could have been secured in 1905. Apparently the W. A. Co. was the only entity that at that time was in a position to make profitable use of the property. The land at that time was wholly uncultivated and covered with noxious weeds, including such well-known pests as lantana and klu. The taxes at that time were four years in arrears. The Holt estate was not in a position to pay them. The lessee undertook to pay the taxes as well as the remainder of the prescribed [656] rent. The consideration that the W. A. Co. undertook to pay for the use of the lands under the lease was adequate. At the date of the lease Eliza's interest was purely contingent but it was within the possibilities that it would become vested shortly after the execution of the lease and for that reason it was important to the lessee to secure that interest, such as it was, as well as the other more definite vested interests. If her interest had vested soon after the date of the lease, Eliza had no funds with which to pay the accruing taxes. She, as well as other lessors, were in some danger of losing their title and interests through enforcement of the government's claim for taxes, past and

future. We think that Eliza's joinder in the lease was wise and beneficial. It enabled her to secure support and maintenance for herself, as will more clearly appear when the instrument of 1906 is under consideration. If, in February or March of 1905, Eliza (by guardian) had by proper petition applied to a court of equity for leave to join in the lease it seems to us that the court of equity so applied to, upon a showing of all of the surrounding circumstances as they existed and as they have been hereinabove recited, would readily have granted the application; and if this is so how can a court now, after the fact, after the lapse of the full period of the lease, after the performance by the lessee of all of the requirements of the lease on its part to be performed, with any propriety cancel the lease? To do so would be to hold in effect that there is no such thing as refusing to cancel an instrument which has been executed by a person mentally incompetent. This lease was for an adequate consideration. All of its terms were fair and reasonable to the lessee and to the lessors. It has been fully performed. It was in the best interests of Eliza and beneficial to her,—fully [657] as beneficial as it could have been if it had been secured and entered into under the careful supervision of a court of equity. There was no fraud, actual or constructive. The imbecility of the lessor did not enter into the transaction. Under these circumstances we can see no equity or justice in canceling the lease.

The only reason which can be suggested as an equity in aid of canceling the lease and the instrument of 1906 is that by doing so Eliza will now be enabled to collect as rents very much larger sums than she was entitled to under the lease. This is not a good reason nor does it constitute an equity, properly so called, in her behalf. At the time of the execution of the lease and even later, at the date of the instrument of August 31, 1906, it was not known to any of the parties or to any one else that pineapples could be successfully or profitably grown on the upper lands of the Holt estate. It was not until about fifteen years later that the W. A. Co. was able to lease the upper lands for pineapple purposes at large rentals. If Eliza had been a perfectly sane lessor and had come forward in 1928 or in 1923, with a request to set aside her lease because the lands thereby demised were of very much greater rental value than that specified in the lease, the courts would have said, in effect, "You must stand by your contract even though it has proven more profitable to the lessee than you and it supposed in 1905." Courts should not now enable her to do that which she could not have done lawfully if she had been sane. It is not an equity in her favor that she leased the land for less than its rental value of fifteen or more years later. She leased it in 1905 for all that it was then worth on the market. It would be inequitable to the lessee to permit a lessor, sane or insane, subsequently to cancel a lease on the ground of greater values sub-

sequently developed, acquired and ascertained. [658]

It is our view of the law that a lease made by an incompetent, who has not been judicially declared insane, to a lessee without knowledge of the incompetency, for an adequate rental and upon other terms that are reasonable and fair, which is beneficial to the incompetent and is in effect a provision in favor of the incompetent for necessities for his sustenance and comfort,—a lease which has been fully performed and is accompanied by no fraud or other circumstances of inequity to the incompetent,—should not be canceled,—even though the lessee can be restored to the status quo ante.

“Where indeed a contract is entered into with good faith and is for the benefit of such persons, such as for necessities, there courts of equity will uphold it as well as courts of law.” 1 Story’s Eq. Jur. (14 ed.) §318. This, *inter alia*, was quoted with approval in our former opinion (31 Haw. 885). We do not understand this statement of Story’s to be in any way qualified by the next succeeding sentence: “And so if a purchase is made in good faith without any knowledge of the incapacity, and no advantage has been taken of the party, courts of equity will not interfere to set aside the contract if injustice will thereby be done to the other side and the parties cannot be placed in statu quo, or in the state in which they were before the purchase.” The introductory “and” indicates that the succeeding sentence is not a repetition of what was said in the sentence first here

quoted but deals with a somewhat different state of facts. It is to be noted that in the second sentence no reference is made to the element of "benefit" to the incompetent or of the contract being "for necessities;" and the second sentence adds the element of necessity of restoration to the status quo when it does not appear that the contract was for the benefit of the incompetent, as for necessities. [659]

Judge Story (14 ed., §317), also quoted in 31 Haw. 885, further says: "The ground upon which courts of equity now interfere to set aside the contracts and other acts, however solemn, of persons who are idiots, lunatics, and otherwise non compos mentis, is fraud. Such persons being incapable in point of capacity to enter into any valid contract or to do any valid act, every person dealing with them, knowing their incapacity, is deemed to perpetrate a meditated fraud upon them and their rights. And surely if there be a single case in which all the ingredients proper to constitute a genuine fraud are to be found it must be a case where these unfortunate persons are the victims of the cunning, the avarice, and corrupt influence of those who would make an inhuman profit from their calamities. Even courts of law now lend an indulgent ear to cases of defense against contracts of this nature, and if the fraud is made out will declare them invalid." It is important to bear in mind that, as thus stated by Judge Storey, the ground upon which courts of equity interfere to set aside the

contract of an imbecile is FRAUD. If, therefore, the surrounding circumstances and the evidence show clearly that there was no fraud, actual or constructive, but that on the contrary the contract entered into by the imbecile and by others, all as lessors, is in every way fair, favorable and beneficial to the imbecile and is one which a court of equity, if appealed to in advance of its execution, with knowledge of all the circumstances, would advise and authorize the guardian of the imbecile to execute as being in the best interests of the ward, a cancellation of the contract would not be justified. In such a case the imbecility does not enter into or contribute to the transaction.

"The mere fact that a party to an agreement was a lunatic will not operate as a defense to its enforcement, or as ground for its cancellation. A contract executed or executory made with a [660] lunatic in good faith, without any advantage taken of his position, and FOR HIS OWN BENEFIT," (the capitals are the author's) "is valid both in equity and at law. And where a conveyance or contract is made in ignorance of the insanity, with no advantage taken, and with perfect good faith, a court of equity will not set it aside, if the parties cannot be restored to their original position, and injustice would be done." 2 Pomeroy's Eq. Jur. (4 ed.) §946. This was also quoted with approval in our former opinion (31 Haw. 887). In this instance also the second sentence, similarly introduced by "and," adds a statement of the necessity

of restoration to the status quo when the fact that the instrument was for the benefit of the incompetent is not a feature in the case. This view is further strengthened by the fact that the author capitalized the words "for his own benefit" in the first sentence. That to his mind was an important element of the circumstances stated by him which would leave the contract "valid both in equity and at law," without consideration of the status quo.

"The tendency of the modern decisions is to broaden out the rule above stated, and to refuse rescission or cancellation of any ordinary contract or conveyance of an insane person, if it is shown to be fair, reasonable, based upon an adequate consideration, and beneficial to the afflicted person, although, of course, inadequacy of consideration or any misrepresentations as to value of the subject-matter will be held fatal to such a contract." 2 Black on Rescission and Cancellation (2 ed.) §256.

"An exception to the general rule that persons of unsound mind are not bound by their contracts is to be found in contracts for necessities for the lunatic himself." 16 A. & E. Ency. L. 625. [661]

"It has been held in many cases that even where the contracting party was shown to have been suffering from impaired mental faculties, yet if the transaction in question was fair and honest and what the party might reasonably be expected to do under all the circumstances, courts will not set aside such a transaction, for the reason that the

mental lack has not entered into the act." *Rieckhoff v. Goddee*, 215 Ill. App. 141, 144.

"Courts of Equity ever watch with a jealous care every contract made with persons non compos mentis, and always interfere to set aside their contracts however solemn, in all cases of fraud, or when the contract or act is not seen to be just in itself, or for the benefit of such persons; but when a purchase is made in good faith, without knowledge of the incapacity, and no advantage is taken, for a full consideration, and that consideration goes manifestly to the benefit of the lunatic, courts of equity will not interfere therewith. 1 Story Eq. §§227, 228; 1 Chitty on Contracts, 191; *Molton v. Camroux*, 2 Exc., 487. If a court of equity in any case sets aside the deed of a non compos, it will ordinarily administer the equity of having him to pay back to the other party the money or other thing received of him. And when it appears that the consideration is full and the lunatic is not able to put the other party in statu quo, or, if the benefit received is actual and of a durable character, in either case, the courts of equity will not be inclined to set aside the conveyance. *Carr v. Holliday*, 1 Dev. & Bat. Eq., 344, and same case, 5 Iréd. E., 167." *Riggan v. Green*, 80 N. C. 175, 176, 177 (30 Am. Rep. 77, 79).

"When it appears that the consideration is full and the lunatic is not able to put the other party in statu quo, or if the benefit received is actual and

of a durable character, in either case, the courts of equity will not be inclined to set aside the conveyance." 18 Ency. Pl. & Pr., 767. [662]

"It does not necessarily follow, when there has been an adjudication by the probate court that a person is insane, that the insanity is of that character which disqualifies him from making a valid contract for necessities." *Stannard v. Burns'* Admr., 63 Vt. 244, 246.

"The trial court went off entirely on the single question of insanity, and would consider nothing else. It misapprehended the controlling principles of law which should have governed the case. * * * The great weight of authority is, that deeds of persons in fact insane, but not so adjudged, are generally held to be voidable and not absolutely void. * * * If the transaction was fair and reasonable, and based upon a valid consideration, without fraud, and there was no circumvention, overreaching or undue advantage taken of the grantor's mental condition, and the contract was made in good faith and was fair, and was for her benefit and to her best interests, then the court ought to have sustained the deed and held it absolute under the circumstances of the case." *Green v. Hulse*, 57 Colo. 238, 242, 243.

"The contract of an imbecile has never been held by this court to be absolutely void but only voidable. * * * The committee for an insane person may avoid the contract of his ward if the contract be one to the disadvantage of the ward, but if the

contract be one which a court of equity regards as advantageous and of lasting benefit to the ward, no rescission or avoidance of the contract will be decreed if it is otherwise enforceable. * * * This was a most equitable and reasonable contract so far as the Casebiers" (including the incompetent) "were concerned but rather burdensome, as it appears to the court, for appellant Smith" (the grantee) "for the old folks, or one of them, may live several years, in which event his undertaking would not be a profitable one to him in a financial way. * * * The best interest of the old people is the [663] sole consideration—the only thing that concerns this court in this litigation. They are entitled to care and attention to the end of their days, and as Smith undertook to furnish this and to take pay from their estate, thus preventing them becoming a charge upon their family and their community, it was a most advantageous arrangement for them. The committee should have continued it." *Casebier v. Casebier, Committee*, 193 Ky. 490, 493, 494.

"It has been decided in this state and elsewhere, over and over again, that the deed of a person of unsound mind, especially before he has been adjudged a lunatic, is not void but is voidable only. * * * The mere fact of insanity, even when clearly proved is not sufficient ground upon which to authorize a court of equity to set aside a deed; but there must, in addition, exist some other equitable grounds warranting the cancellation. If the

price is adequate and the transaction fair, neither the insane grantor nor his committee has an absolute right to have the conveyance cancelled; and only when there is injustice or inequity will a court of equity be authorized or justified in interposing to annul a transaction and to restore the parties to the statu quo ante. Unless the grantor, by reason of his insanity or imbecility, has been imposed upon and has suffered some injustice, no reason exists for the cancellation of the deed; and without reason therefor the transaction cannot be disturbed. * * * The deed was not necessarily void; only voidable, and unless there was unfairness or injustice, for instance an inadequate consideration, the deed should not be set aside." *Clay v. Clay's Committee*, 179 Ky. 494, 495, 496 (also referred to with approval in 31 Haw. 886).

Concerning contracts that have been fully performed it is said in 24 A. & E. Ency. L. 612, 613; "Where the contract has [664] been fully and voluntarily performed before relief by rescission is sought, it is only where the most forceful reasons exist for granting equitable relief that a court of equity or a court exercising equitable powers will interpose to decree the rescission of the contract; and this is true even though the circumstances of the case are such that were the contract unperformed, the court would not decree the specific performance on behalf of the other party. Indeed, it has been frequently held that nothing short of actual fraud or mistake will justify the

court in granting rescission of an executed contract. This rule is especially applicable where intervening rights of innocent third persons would be impaired by granting rescission."

The instrument of 1906 was not signed by Eliza's husband. Under section 2993, R. L. 1925, which was in effect in 1906, "no sale or mortgage of" a wife's "real estate shall be valid without the written consent of her husband." If the instrument of 1906 was a conveyance of any interest of Eliza's in the land, it was invalid for lack of her husband's written consent. If that instrument was susceptible of two constructions, one leading to invalidity and the other to validity, it should be given the construction which leads to validity—in order thereby to carry out the intention of the parties. The instrument contains no apt words of conveyance of an interest in land. It can only be thought to have that effect because of the rule that "a gift of the income of property is to be construed as a gift of the property itself." In *re Makaka*, 29 Haw. 815. But this is a general rule. It does not necessarily follow that because there is a gift or transfer of income from lands there is implied or results therefrom by operation of law a gift or transfer of the title to the land. The ex- [665] ception is as well settled as the rule itself, that if in the instrument under consideration it appears that the testator or grantor did not intend a conveyance of the land or of an interest in it there is no such conveyance. In *re Makaka*,

supra, 815, 818, citing earlier Hawaiian cases and other authorities; *Rawlins v. Harbottle*, 13 Haw. 297, 300, 301. There is no indication in the instrument of 1906 of any desire or intention to convey an interest in the land. The language is clear that what is sold and transferred by Eliza is "all her title and interest in and to any and all rents, issues and profits to which she may hereafter be entitled or which may be due and payable to her by, through or under the lease to the Waialua Agricultural Company, Limited, dated the 17th day of March, 1905. *.*.* Or by virtue of being the only child of John Dominis Holt, the elder, and devisee under the will of R. W. Holt, deceased, together with all and every her right to demand, receive, collect and receipt for all such rents, issues and profits from whomsoever due during the term of the natural life of her, the said Eliza R. P. Christian." This language is unambiguous. There is no provision made in the instrument for the joinder therein, in any capacity, of Eliza's husband. The exception, therefore, and not the rule, applies in this instance. The assignment and transfer was of the rents only and not of the reversion or of any interest in the land. In so far as appears from the evidence, on August 31, 1906, as well as on March 17, 1905, Eliza had no income or other means of support. Her interest in the land was purely contingent. It might prove to be, upon vesting, a one-third interest, or it might prove to be an interest much smaller than one-third, or it might

never vest at all. For two or three years prior to March, 1905, Eliza had lived with and had been supported by Annie Holt Kentwell, who [666] was her cousin. By the express terms of the instrument of 1906 Annie Kentwell undertook to support and maintain Eliza for and during the remainder of her, Eliza's, natural life. In entering into this contract (1906) neither of the parties below knew or could know how long a period of time would elapse before Eliza would become entitled to a share of the rents under the lease or how much of the rents Eliza would become entitled to if she ever became entitled to any, or that she would, in fact, ever become entitled to any. Annie took those chances. As events subsequently happened, a period of seventeen years elapsed before Eliza's father died and Eliza became entitled to any of the rents. In other words, for seventeen years Annie performed her obligations under the contract of 1906, supporting and maintaining Eliza, without any compensation and without any certainty as to when her compensation would begin to accrue, if at all. It is true that after the allowance of the amendments to the petition, Annie filed an answer in which she says that she "now claims no rights of any kind by virtue" of the instrument, but neither her answer nor her present attitude can in anywise affect the nature or the status of the instrument of 1906 or the rights of the W. A. Co. thereunder. By the deed of May 2, 1910, Annie Kentwell, a mentally competent person, transferred all of her

rights under the instrument of 1906 to the W. A. Co. She cannot now, by her answer in this case, cause any diminution of the rights which she transferred by her deed.

The lease of 1905 secured to Eliza a possibility, however uncertain or dim it was, of obtaining from her contingent interest in the land the means of self-support. By the assignment of 1906 she transformed that possibility, uncertain and dim as it was, into [667] a present and real undertaking by Annie Kentwell to provide her for the rest of her days with support and maintenance. The assignment of 1906, including as it did a transfer of rents, if any, which might accrue under the lease of 1905, and transferring also the rents accruing thereafter from whatever source, was beneficial to Eliza. In effect, it was so regarded in our former opinion in this case when the assignment and Annie Kentwell's contract therein to support Eliza were referred to as being of the surrounding circumstances or elements or equities which led us to the conclusion that the deed of 1910 was not beneficial to Eliza and should be canceled. We there said: "That it was not beneficial to Eliza to dispose of her interest at the time the deed was signed is obvious. She was then living with her father and the Kentwells at the home of the latter in Oxford. Her life, because of her imbecile condition, was very restricted and her wants were accordingly simple. There was no necessity for her to have more than enough money to supply them. Annie Kentwell, by

the instrument of August 31, 1906, to which we have already referred, had undertaken to support Eliza during her life. She was in no danger, therefore, of becoming a public charge or of not being supplied with the things necessary to her sustenance and comfort. In her circumstances it would clearly be the part of wisdom to hold on to her contingent interest when by doing so she might eventually become the owner of a vested and more valuable interest. It was certainly of no benefit to her to exchange her interest for a sum of money which she did not need and which she herself did not receive." (31 Haw. 896.) But if she had not had those assurances of money and support from her lease of 1905 and her assignment of 1906, the effect on the deed of 1910 might conceivably have been different. That cannot be decided now. [668]

For the petitioner it is argued that Eliza did not receive any consideration for the lease of 1905, or for the instrument of 1906. While it is true that the rents under the lease were not paid to her even after the death of her father in 1922, that is because she had assigned them to Annie Kentwell. She was not entitled to any rent under the lease until 1922. She did, however, receive valuable consideration, both for the lease and for the assignment, in the form of support and maintenance from Annie Kentwell and is entitled, under the assignment of 1906, to continue to receive that support and maintenance during the remainder of her

life. In addition, the property was preserved from tax liens and sales and was greatly improved.

While it was held in our former opinion that a conveyance by a mentally incompetent person who has not been judicially declared insane and whose incompetency is not known to the person he deals with, is voidable and not void, no consideration was given to the question, which had not then arisen, whether, when an incompetent conveys or assigns to one who has knowledge of the incompetency and then the grantee or assignee conveys or assigns to a third person who has no knowledge of the incompetency of the first grantor or assignor, the conveyance or assignment to the innocent third person is void or is voidable. The authorities on this point are in conflict. We think that the rule better supported by reason is that the property passes to the innocent third person freed from the taint which it received by reason of the guilty knowledge of the first grantee or assignee.

"There are two special rules on the subject which have been settled since an early day: one being a mere application of the general doctrine, and the other a necessary inference from it. [669] The first is, that if a second purchaser, for value and without notice, purchases from a first purchaser, who is charged with notice, he thereby becomes a bona fide purchaser, and is entitled to protection. This statement may be generalized. If the title to land, having been passed through successive grantees, and subject in the hands of each to prior outstand-

ing equities, comes to a purchaser for value and without notice, it is at once freed from these equities; he obtains a valid title, and, with a single exception, the full power of disposition. This exception is, that such a title cannot be conveyed, free from the prior equities, back to a former owner who was charged with notice." 2 Pomeroy's Eq. Jur. (4 ed.) §754.

"We have repeatedly held that the deed of a person of unsound mind is not void, but merely voidable, and this being true it will not be set aside as to a bona fide purchaser for value and without notice of the unsoundness of mind of the grantor. This is especially true as to a second purchaser of the land. * * * If a second purchaser for value and without notice purchases from a first purchaser who is charged with notice, he thereby becomes a bona fide purchaser and is entitled to protection." *Campbell v. Kerrick*, 142 Ky. 279, 280, 281. To the same effect is *Bevins v. Lowe*, 159 Ky. 439, 443.

"The contract of a person of unsound mind, like that of an infant, is not void, but voidable only, if made before inquest. * * * If a second purchaser for value and without notice purchases from a first purchaser who is charged with notice, he thereby becomes a bona fide purchaser and is entitled to protection. * * * Where a deed is not void ab initio, but only voidable, the title passes to the grantee and consequently a sale by him to [670] a bona fide purchaser without notice passes the title." *Arnett's Com. v. Owens*, 23 Ky. L. R. 1409 (65 S. W. 151, 152).

"Had the defendants purchased directly from Oliver Odom for value, and without notice of his mental incapacity to make a deed, a court of equity would not ordinarily set aside the deed. * * *. We do not see that the condition of the defendants is any worse because they bought mediately and not immediately. * * *. If the title of an innocent purchaser for value, and without notice, can be upset for the alleged mental incapacity of one grantor, it can be done though the grantor may have been a very remote one." *Odom v. Riddick*, 7 L. R. A. (N. C. 1890) 118, 119.

In view of the rule which we have already adopted in this case that, when the deed of an incompetent is to a person not having knowledge of the incompetency requires that an innocent third person in the position above described should not be placed in a worse position than he would have been in if he had been an innocent, direct taker from the hands of the incompetent. When the W. A. Co. received the deed of Annie Kentwell, of May 2, 1910, it did so, as we have already held, without knowledge of the incompetency of Eliza. In our opinion the deed from Annie Kentwell, a competent person, to the W. A. Co., did operate transfer to the company the right which Annie had secured from Eliza by the assignment of 1906.

No decision of the United States Supreme Court holding to the contrary has been called to our attention. *Kendall v. Ewert*, 259 U. S. 139, is not

on the point. In that case the conveyance was by an Indian, who was a common and habitual drunkard, to one Smith and about a year later Smith conveyed to the defendant Ewert. The latter considered himself legally incapable of purchasing direct [671] from the Indian because he (Ewert) was employed at the time by the government in Indian affairs and an existing statute prohibited all persons employed in Indian affairs from having any interest or concern in any trade with the Indians. Ewert, therefore, arranged with Smith that Smith should take the deed from the Indian and then a year later should convey to him, Ewert. This program was carried out. The evidence in the case abundantly showed that at the time of the transaction between the Indian and Smith, Ewert had complete knowledge of the habits of the Indian in the matter of drinking to excess. In other words, Ewert took his deed from Smith and procured the taking of the deed by Smith as his agent, in both instances with entire knowledge of the incompetency of the grantor. There was no occasion for the court to consider, and it did not consider, what the law would be if Ewert had been an innocent subsequent grantee taking from an earlier grantee who had knowledge of the incompetency of the grantor. *Dexter v. Hall*, 82 U. S. 9, has already been considered at some length, by this court in its former opinion. *Hall*, the grantor, had been judicially adjudged to be a lunatic and at the time of the execution of the power of attorney was in confinement in a

lunatic asylum under judicial commitment. Under this power of attorney the land was conveyed to persons who afterwards conveyed to Dexter, the defendant. Under these circumstances Dexter, the subsequent grantee, as well as the earlier grantee who took direct from Hall through the latter's attorney in fact, was legally chargeable with knowledge of the insanity of Hall. As stated by this court in its former opinion, Hall's confinement under commitment in the lunatic asylum "in itself was sufficient to inform any one coming in contact with him that he was in no condition to transact business and that it would be hazardous to deal with him." (31 [672] Haw. 877.) In that case, therefore, the subsequent taker took with guilty knowledge of the grantor's incompetency, as clearly as did the earlier grantees; and there was no occasion to consider, and the court did not consider, what the law would be in a case in which the subsequent grantee took innocently from an earlier grantee who had taken with guilty knowledge. And see *Luhrs v. Hancock*, 181 U. S. 567, discussed in our former opinion (31 Haw. 877-879).

Another question remains to be considered, with reference to the deed of 1910. In our former opinion it was held that restoration to the status quo could be accomplished by returning Eliza and the W. A. Co. to the position of tenants in common, which they would have occupied, after 1922, if the deed of 1910 had not been executed by Eliza, on the theory that in a partition suit a court of equity,

with its wide range of powers, could secure to the W. A. Co. a continuation of the benefit of the improvements which it had erected in reliance upon the deed from Eliza. At that time no consideration was given by the court, as a careful examination of its opinion will indicate, to the fact that large and costly improvements had been constructed by the W. A. Co., in reliance upon the deed of 1910, on lands other than Holt estate lands. More specifically, no consideration was given to the fact of the reconstruction in 1921 by the W. A. Co. of the Wahiawa dam and the creation thereby of a reservoir extending back into the mountains for a distance of several miles along both the north and the south forks of the Kaukonahua stream and covering about 300 acres, the reconstruction in 1931 costing the company the sum of about \$210,000. Nor was any consideration given at that time to the construction of a ditch more than four miles in length to lead the waters from the Wahiawa dam to the cane lands of the W. A. Co., including lands of the Holt estate as [673] well as other lands of the company. Similarly, no consideration was given by the court to the establishment of the Poamoho pump by the W. A. Co. on grant 235 belonging to the Hols but with ditches and pipe lines (on non-Holt lands) through which the water raised by the Poamoho pump was forced and carried to cane fields both on and off the Holt lands. It is true that a very slight reference was made to these improvements (which had been constructed away from the Holt

lands) in one of the briefs of the respondent filed on the first appeal but we can find no reference to this subject in the brief of the petitioner filed on the first appeal. In any event, the fact remains that the existence of these costly improvements away from the Holt lands was not considered in the former opinion with reference to its effect on the issue of restoration to the status quo. It should be considered now.

We think that the construction of these improvements, costly though they were, on land other than Holt lands, need not prove to be an impediment to a restoration of the status quo. They and the land on which they are situated are the property solely of the W. A. Co. Eliza has no right, title or interest in them or in the land occupied by them. She has, however, or, after the execution and delivery of the deed from the W. A. Co. to her, will have some interest in the Holt estate land (at its southeasterly corner) on which a comparatively small part of the Wahiawa reservoir is situated and also has, or will have, similar interest in the lands occupied by other reservoirs, pumps and other improvements erected by the W. A. Co. on the Holt lands. We think that there is much force in the argument presented by the W. A. Co. to the effect that such relief as the W. A. Co. is entitled to at the hands of Eliza should be afforded it in this suit and not left to consideration and treatment [674] in a future partition suit. The provisions set forth in the concluding paragraphs of

this opinion are intended to accomplish an equitable restoration to the status quo.

The W. A. Co. suggests as an impediment to the restoration to the status quo that the Wahiawa dam and reservoir and the Poamoho pump were constructed for the purpose of a "unified," larger sugar-cane plantation and that if the deed of May 2, 1910, is canceled and in consequence a part of the Holt estate cane lands is restored to Eliza, the company will lose a part of the use, benefit and efficiency of these costly instrumentalities of irrigation. The circuit judge, by means purely of mathematical calculation, found that the loss to the W. A. Co. of Eliza's share in the cane lands of the Holt estate would still leave the Wahiawa dam and reservoir "90% to 95% effective." The total area of the Holt lands under cultivation in cane by the W. A. Co. is 1622.95 acres. One-third of that area, if set apart for Eliza, would be 540.98 acres. The total net area of the W. A. Co. cane land, including the Holt lands, is 9,904 acres. All of the Holt cane lands, therefore, constitute $15\frac{1}{2}\%$ of all of the W. A. Co. cane lands and Eliza's one-third of the Holt cane lands would be a little over 5% of the total lands in cane planted by the W. A. Co. Upon partition the W. A. Co. might be deprived of 5% of its present area of cane lands upon which it could no longer use Wahiawa waters. No witness who took the stand at the trial gave any testimony categorically as to whether the efficiency of the Wahiawa dam and reservoir would be diminished

in any degree by the deprivation of this 5% of cane lands. It does, however, clearly appear from other testimony, of engineers in the employ of the W. A. Co., that intermittent supplies of water from lands above Helemano (the Holt property) are used as [675] much as possible in order to conserve the Wahiawa supply since the latter is itself somewhat inconsistent. There are periods of time, occasionally, when the Wahiawa reservoir is very low, or becomes entirely exhausted and recourse at those times must be had to the Poamoho and other pumps. It is also clear from undisputed testimony that pumped waters are more costly to the W. A. Co. than waters originating in the mountains and flowing on the surface by gravity. Upon this state of the evidence the only finding can be that efficiency of the Wahiawa dam and reservoir will not be appreciably diminished by the loss to Eliza of one-third of the Holt estate cane lands, if such one-third in cane lands shall be awarded to her by the court in a future partition suit. Hence the possibility of the loss of one-third of the Holt cane lands is not an impediment to status quo.

Under the terms of the lease of March, 1905, all improvements made on the lands by the lessee were to revert to the lessor. Since the lease is being sustained, this provision should be complied with. Any improvements made solely in reliance upon the lease should be permitted to revert to the lessor. Ordinarily, improvements made by the W. A. Co. on the leased land prior to May 2, 1910, would be re-

garded as having been made in reliance upon the lease alone. It may be, however, that some or all of the improvements made prior to May 2, 1910, were substantially renewed or replaced after the delivery of the deed of that date. It may be, also, that some of the improvements, as for example, roads or railroads, built prior to May 2, 1910, were after that date added to in such a way as to make them essential parts of a larger system of improvements of a similar nature. All such renewals, replacements or additions made after the date of the deed cannot be regarded as having been made solely in reliance upon the lease but must be deemed to have [676] been made in reliance upon every right possessed by the W. A. Co., including its supposed title under the deed of May, 1910. Improvements, therefore, even though made prior to May 2, 1910, which have been substantially replaced, renewed or added to after that date, cannot in equity be permitted to revert to the lessor under the terms of the lease but must be treated as though wholly constructed after May 2, 1910.

Edward S. Holt, one of the nine children of Owen J. Holt, is the owner of an undivided one twenty-seventh interest in the Holt lands. The children of Elizabeth Holt Richardson, a daughter of the same Owen J. Holt, are the owners of another undivided one twenty-seventh interest in the Holt lands. It is contended by the W. A. Co. that the existence of these outstanding two twenty-sevenths interests will require in a future partition ~~and~~ the

joinder of their owners as necessary parties and will place in jeopardy the rights of the W. A. Co. to secure a sufficient and just restoration to the status quo. The answer to this contention seems to us to be that the construction of improvements by the W. A. Co., whether on or off the Holt lands, was with full knowledge on its part of the existence of these two outstanding interests and that no act or omission of Eliza's, whether by deed or lease or otherwise, has operated or could operate to affect in any way any of the rights of the owners of these two outstanding interests in a future partition suit. Whatever those rights were on the part of the owners prior to the execution of the deed of May 2, 1910, by Eliza, they have remained the same so far as that particular conveyance was concerned. In other words, in constructing the improvements, the W. A. Co. did not rely and could not have relied upon Eliza's deed of May 2, 1910, for protection against the owners of either or both of the outstanding two twenty-sevenths interests. [677]

The only other entity mentioned as a necessary party to a future partition suit is the Territory of Hawaii. Just what the interest of the Territory is in the Holt lands does not clearly appear, although there is a suggestion in the appellant's reply brief that it would be a necessary party because of "lands purchased for school purposes." If the Territory purchased one or more lots of

land for school purposes from the W. A. Co., out of Holt lands, it is inconceivable that the W. A. Co.'s interest in that regard cannot be easily protected in a future partition suit. If the record now before us shows that such a sale was made by the W. A. Co. to the Territory after May 2, 1910, Eliza can be required by the decree in this suit to convey to the Territory all of her right, title and interest in such school lands.

The Territory of Hawaii, it does appear, is the owner of certain lands eastward and mauka of the Holt lands and adjoining the latter. The mere fact that the Territory is such an adjoining owner does not render it a necessary or proper party in a partition suit.

This subject of restoration to the status quo is here considered purely with reference to its effect upon the cancellation of the deed of May 2, 1910. Irrespective of the subject of status quo the lease of March, 1905, and the instrument of August 31, 1906, should be sustained. If sustained they afford a complete protection to the W. A. Co. against any award of rents or damages.

In our opinion the decree should provide:

I.

That the deed of May 2, 1910, be canceled and that the W. A. Co. reconvey to Eliza all of the interest which it has acquired from her under and by virtue of that deed upon her payment [678] to

the W. A. Co. of the sum of \$30,000, with interest at six per cent per annum from May 2, 1910, to the date of the final decree herein, or upon her assuring to the W. A. Co. the payment of said sum together with interest by a mortgage upon the interest so reconveyed or in any other satisfactory manner; and that the deed of reconveyance so required of the W. A. Co. be upon the condition subsequent, that immediately after its execution and delivery Eliza shall execute and deliver to the W. A. Co. the deeds and grants which are in the next paragraph required of her.

II.

(a) That, immediately after the execution and delivery to Eliza of the W. A. Co.'s deed required by paragraph I hereof, Eliza convey to the W. A. Co. all of her right, title and interest in and to (1) the land at or near the southeastern end of the Holt lands which is occupied by the waters of the Wahiawa reservoir when the waters in that reservoir reach to the top of the spillway of the Wahiawa dam, together with additional land along the northwestern or Holt side of the Wahiawa reservoir when at its extreme height, of a sufficient width to permit of reasonable care, maintenance and use of the reservoir along that side; (2) all of that portion grant 235 which is occupied by the Poamoho pump and its accessories and as much more as may be reasonably necessary for the con-

venient and effective care, maintenance and use of that pump and its accessories; (3) each and all of those portions of the Holt lands which are occupied by reservoirs, dams and camps constructed by the W. A. Co. and as much additional land adjoining each of said reservoirs (including dams) and camps on all sides thereof as is reasonably necessary for the convenient and effective care, maintenance and use thereof; and (4) all portions of the [679] Holt lands upon which the W. A. Co. has constructed and maintains pumps and their accessories and as much land wholly around each of said pumps and accessories as is reasonably necessary for the convenient and effective care, maintenance and use of said pumps.

(b) That Eliza grant to the W. A. Co. by a good and sufficient written instrument, permanent rights of way for all ditches, flumes, syphons, pipe lines, railroads, roads, electric power lines, telephone lines and other utilities, if any, which have been constructed and are being maintained by the W. A. Co. on the Holt lands or any part or parts thereof, together, in each of the instances just recited, with additional land on each side of each such ditch, flume, syphon, pipe line, railroad, road, electric power line, telephone line and other utility above referred to, of such width as may be reasonably necessary for the convenient and effective care, maintenance and use of each such utility so referred to.

(c) That the execution and delivery by Eliza

to the W. A. Co. of the deeds and grants by this paragraph II required, immediately after the execution and delivery to her by the W. A. Co. of the deed from it by paragraph I hereof required, shall be a compliance with and performance of the condition subsequent named in paragraph I above.

III.

That the W. A. Co. by a sufficient written instrument assure to Eliza such rights of way in her behalf as may be reasonably necessary, over, under or across each ditch, flume, syphon, pipe line, railroad, road, electric power line, telephone line and other utility, if any, constructed and maintained by the [680] W. A. Co. on the Holt lands as aforesaid, and rights of way for which are now required from Eliza in favor of the W. A. Co. under paragraph marked II hereof—meaning hereby to assure to Eliza at the hands of the W. A. Co. such rights of way over, under or across the utilities mentioned above as may be reasonably necessary for access by Eliza and those acting under her, from each part of the common Holt lands which may be awarded to her on partition to each other part of the Holt lands which may be likewise awarded to her on partition, as well as access by her over, under or across each such utility from or to any nearby public highway to or from any part of the lands so awarded to her on partition.

That the instruments mentioned in this paragraph be executed and delivered last but immediately

after the delivery of the instruments required by paragraph marked II above.

IV.

(a) These provisions in the preceding paragraphs are intended to assure to the W. A. Co. restoration NOW, in this suit, to it of the improvements which it has constructed and is maintaining on the Holt lands as well as the continued use and benefit of those which it has constructed off of the Holt lands.

(b) If Eliza and the W. A. Co. cannot agree upon (1) a more specific definition or description than is herein contained of the "additional" strips of land provided for in the foregoing paragraphs for the convenient and effective care, maintenance and use of the lands, utilities and ways which are specifically described in the foregoing paragraphs, and (2) an enumeration and a description of the improvements made by the W. A. Co. prior to May 2, 1910, which, under the views in this opinion expressed, should revert to Eliza under the terms of the lease of March 17, 1905, then the case will be remanded to the circuit judge for such [681] further proceedings as may be necessary for the judicial determination of (1) the extent, definition and description of each and all of such "additional" land and (2) an enumeration and a description of the improvements made by the W. A. Co. prior to May 2, 1910, which, under the views in this opinion

expressed, should revert to Eliza under the terms of the lease of March 17, 1905.

The decree appealed from is reversed and a decree or a remanding order, as the case may be, will be entered in this court upon presentation.

ANTONIO PERRY.

CHARLES F. PARSONS.

BARRY S. ULRICH

(Ulrich & Hite on the brief)
for petitioner.

H. PHLEGER and

A. L. CASTLE

(Brobeck, Phleger & Harrison
and Robertson & Castle on the
briefs) for respondent Waia-
lua Agr. Co. [682]

DISSENTING OPINION OF BANKS, J.

I cannot agree with the majority of the court that it was error to cancel the lease of 1905 and the instrument of 1906.

It seems to be the opinion of the majority that the lease of 1905 is incontestable by Eliza Christian for the reason that it was taken in ignorance of her imbecility and was beneficial to her. It also seems to be the opinion of the majority that the instrument of 1906 is incontestable by Eliza Christian, so far as the Waialua company is concerned, for the reason that the Waialua company purchased

from Annie Kentwell for a valuable consideration, her interest in the rents that had been assigned to her by the instrument of 1906, in ignorance of Eliza Christian's imbecility. It is also inferable from the opinion of the majority that they consider that the instrument of 1906 is incontestable by Eliza Christian, even as to Annie Kentwell, for the reason that the consideration for the instrument was the agreement of the latter to support the former during her life. I cannot agree with any of these conclusions.

Speaking of the lease the majority stated their view of the law as follows: "It is our view of the law that a lease made by an incompetent, who has not been judicially declared insane, to a lessee without knowledge of the incompetency, for an adequate rental and upon other terms that are reasonable and fair, which is beneficial to the incompetent and is in effect a provision in favor of the incompetent for necessities for his sustenance and comfort—a lease which has been fully performed and is accompanied by no fraud or other circumstances of inequity to the incompetent—should not be canceled—[683] even though the lessee can be restored to the status quo ante.

It is thought by the majority that the view that the lease is incontestable by Eliza Christian regardless of whether the Waialua company can be restored to its status quo is supported by the doctrine announced by Judge Story in his work on Equity Jurisprudence (Vol. 1, 14 ed.). This doctrine was

quoted in the former opinion of this court and is now requoted by the majority. I take the liberty of quoting it again (§317): "The ground upon which courts of equity now interfere to set aside the contracts and other acts, however solemn, of persons who are idiots, lunatics, and otherwise non compotes mentis is fraud. Such persons being incapable in point of capacity to enter into any valid contract or to do any valid act, every person dealing with them, knowing their incapacity, is deemed to perpetrate a meditated fraud upon them and their rights. And surely if there be a single case in which all the ingredients proper to constitute a genuine fraud are to be found, it must be a case where these unfortunate persons are the victims of the cunning, the avarice and corrupt influence of those who would make an inhuman profit from their calamities. Even courts of law now lend an indulgent ear to cases of defense against contracts of this nature, and if the fraud is made out will declare them invalid." I see nothing in this language which justifies the conclusion that the contract of an imbecile, fairly entered into by the other party without knowledge of the imbecile's mental state and which was for the imbecile's benefit, cannot be avoided when the facts show that the status quo of the party claiming under the contract can be restored. What is clearly implied by Story's language is that a contract made with an [684] idiot, with knowledge of his idiocy, is a fraud on the idiot and therefore void and that when under

these circumstances the defense of idiocy is interposed to any claim made under the contract even courts of law lend an indulgent ear to it and if the idiocy is proven will declare the contract invalid. In the succeeding section (318) of his treatise, under the heading "Contracts with Person Non Compos Mentis Should Be Evidenced by Utmost Good Faith," the great author said: "But courts of equity deal with the subject upon the most enlightened principles, and watch with the most jealous care every attempt to deal with persons non compotes mentis. Whenever from the nature of the transaction there is not evidence of entire good faith (*uberrimae fidei*), or the contract or other act is not seen to be just in itself or for the benefit of these persons, courts of equity will set it aside or make it subservient to their just rights and interests. Where, indeed a contract is entered into with good faith and is for the benefit of such persons, such as for necessities, there courts of equity will uphold it as well as courts of law. And so if a purchase is made in good faith without any knowledge of the incapacity, and no advantage has been taken of the party, courts of equity will not interfere to set aside the contract if injustice will thereby be done to the other side, and the parties cannot be placed in statu quo, or in the state in which they were before the purchase."

The majority are of the opinion that the portion of this section which precedes the words "and so" relates to a situation entirely different from that

described in the portion following these words. Their view of this section is thus stated in the opinion: "Where indeed a contract is entered into with good faith and is for the benefit of such persons, such as for [685] necessities, there courts of equity will uphold it as well as courts of law." 1 Story's Eq. Jur. (14 ed.) §318. This, *inter alia*, was quoted with approval in our former opinion (31 Haw. 885). We do not understand this statement of Story's to be in any way qualified by the next succeeding sentence: "And so if a purchase is made in good faith without any knowledge of the incapacity, and no advantage has been taken of the party, courts of equity will not interfere to set aside the contract if injustice will thereby be done to the other side, and the parties cannot be placed in statu quo, or in the state in which they were before the purchase." The introductory 'and' indicates that the succeeding sentence is not a repetition of what was said in the sentence first here quoted but deals with a somewhat different state of facts. It is to be noted that in the second sentence no reference is made to the element of 'benefit' to the incompetent or of the contract being 'for necessities'; and the second adds the element of necessity of restoration to the status quo when it does not appear that the contract was for the benefit of the incompetent, as for necessities."

I think it is hardly fair to an author to single out any one word he may happen to have used and interpret his entire thesis by it. For instance,

Story uses language which if it stood alone might be susceptible of the construction that if an imbecile conveyed property of great value to one who was ignorant of the imbecility and the consideration was the agreement of the grantee to furnish the imbecile with support during his life the conveyance must stand although the imbecile died a month after the conveyance and only one hundred dollars had [686] been spent for his support. But when Story's entire thesis is considered I imagine no one would contend that this is what he meant. Story also uses language in the second paragraph of the section from which a sophist might argue that unless a "purchase" was involved the doctrine the author thought sound would have no application. I think no court would listen with patience to such a contention, it being evident from the context that all contractual dealings with an imbecile were under consideration.

Story was laying down what he considered equitable principles by which the respective rights of lunatics and those dealing with them should be determined. One of these principles was that if a person deals with a lunatic in good faith and the transaction is for the benefit of the lunatic, such as furnishing him with necessities, the lunatic should not be permitted to escape responsibility to the detriment of the other contracting party.

I do not believe that it is implicit in the language used by Story that every contract entered into in good faith with a lunatic and for his benefit

should be held incontestable when it appears that the other contracting party would suffer no harm from the cancellation of the contract. This would be to withhold from these unfortunate persons the protection which courts of equity have always given them and instead of making the contract subservient to their just rights and interests would make their rights and interests subservient to the contract. The second paragraph of the text, I think, was intended by the author to make this entirely clear. His introduction of it with the phrase "and do," I believe, indicates this. The para- [687] graph should be interpreted as though the introductory words were "therefore" or "that is to say," indicating that what followed was to be considered as corollary to or a conclusion from what preceded it. (For interpretation of the phrase "and so" and the word "so" see *Blanton v. State*, 1 Wash. 265, and *Clem v. State*, 33 Ind. 418, 431.) If the phrase "and so," as it was used by Story, is given the meaning which I think it imports, the second clause of his thesis means that contracts made with an imbecile in good faith, without any knowledge of the incapacity and without taking advantage of the imbecile, should be upheld unless the party dealing with the imbecile can be restored to his status quo and thus protected against injustice. Pomeroy, in his work on Equity Jurisprudence §946, which is quoted by the majority, expresses his view of the law in almost the same language as that used by Story. In view of the cases cited in support of their theory,

which I have examined carefully, I am led to the conclusion that these authors did not intend and could not have meant to lay down a rule that simply because a contract is for the benefit of the lunatic such contract will be upheld even though the parties could be restored to status quo.

In further support of their conclusion the majority also quote from six cases—*Rieckhoff v. Goddee*, 215 Ill. App. 141; *Riggan v. Green*, 80 N. C. 175; *Stannard v. Burns' Admr.*, 63 Vt. 244; *Casebier v. Casebier, Committee*, 193 Ky. 490; *Green v. Hulse*, 57 Colo. 238, and *Clay v. Clay's Committee*, 179 Ky. 494.

In *Rieckhoff v. Goddee*, William Rieckhoff, an insane person, had a judgment against Augusta Greenberg which he assigned to defendant Goddee. William's wife, Anna, who was his conservatrix and the complainant, sought to set aside the assignment [688] of her husband and alleged that at the date of the assignment he was insane. The defendant Goddee had made advances to William's mother, Karolina Rieckhoff, and had also given thirty dollars to William after the assignment. The majority quote the following dictum from the *Rieckhoff* case (p. 144): "It has been held in many cases that even where the contracting party was shown to have been suffering from IMPAIRED MENTAL FACULTIES, yet if the transaction in question was fair and honest and what the party might reasonably be expected to do under all the circumstances, courts will not set aside such a trans-

action, for the reason that the mental lack has not entered into the act." (*Italics mine*) The following cases are cited by the Illinois court in support of its statement of the law: *English v. Porter*, 109 Ill. 285; *Kelly v. Nusbaum*, 244 Ill. 158; *Fitzgerald v. Allen*, 240 Ill. 30. An examination of these cases discloses that in the dictum the Illinois court had in mind the rule that is applicable when there is not entire but only partial lunacy. That the quotation is only a dictum is shown by the fact that in the *Reickhoff* case the Illinois court held the assignment void because of the assignee's knowledge of the assignor's insanity, and refused to require the complainant to restore to Goddee the advances he had made.

In *Riggan v. Green*, plaintiffs, heirs of a lunatic, sought to recover a tract of land which their lunatic ancestor deeded to Brown and the latter to the defendants. Brown paid five hundred dollars, the full value of the land, and the money was used to extinguish an execution against the lunatic grantor. As a result of this transaction the lunatic was enabled to keep another piece of land which later descended to the plaintiffs. [689] It is apparent from a study of that case that the reason why the court did not apply the doctrine of restoration to status quo was that the plaintiffs would gain nothing by rescission conditioned upon restoration. In refusing to set aside the deed the court particularly had in mind this fact as appears on page 177 of the opinion: "From such a state of facts, it would be ap-

parent to the chancellor, and he would so decide, that a rescission of the deed would produce no benefit to the plaintiffs if coupled with the duty and obligation to replace defendants in statu quo, whilst it would be a great inconvenience and injustice to the defendants, and thereupon the conclusion would be not to interfere to set aside the deed, but leave the same to be operative and valid."

I agree with the Stannard case in holding the lunatic liable for necessities. The only distinction I need make between the case at bar and the Casebier and Green cases is that in the latter cases no offer of restoration was made and no word on that subject was said. Therefore I believe they do not support the rule that where a contract is for the benefit of the lunatic it will be upheld even though the parties can be placed in statu quo.

The Clay case is clearly distinguishable on its facts from the case at bar. In the Clay case the lunatic, George Clay, and his sister, Letitia, who owned the remainder interest in the land, deeded 296 acres to S. Brooks Clay, but reserved a life interest in fifty acres. The latter paid \$12,000 cash and agreed to make eleven annual payments of \$2040 each with interest, evidenced by eleven notes. Brooks also agreed to pay \$5000 upon the death of George, making the total consideration [690] \$39,440. Shortly after the deed was executed suit was brought to have it canceled, which relief was granted by the chancellor. The Kentucky court of appeals, in reversing the decree of the chancel-

lor, held that the consideration was fair and covered the full value of the land. Apparently the land was of no greater value when the suit was brought than it was when the deed was made. Under these circumstances the insane person, having received the full value of the land, would have been no better off by returning the consideration and getting his land back.

Moreover, in the later case of *Cash v. Bank of Howes*, 196 Ky. 570, 245 S. W. 137, the court set aside a contract which was beneficial to the lunatic. Nellie Hawkins, a lunatic, and her five children, were living with her brother Noah Wagoner on a farm. Noah held the land under a lease. Nellie and Noah desired to purchase this farm so as to acquire a permanent home. To that end a deed was obtained from the owner and Nellie executed two notes and two checks covering the purchase price of the land. R. L. Cash, who was to receive the money, presented the two checks drawn on the defendant bank. The bank refused payment on the ground that Nellie Hawkins was mentally incompetent at the time she signed the checks. Two days later she was adjudged insane. Cash sued the defendant bank to recover on the two checks. Judgment was rendered by the lower court in favor of the defendants, and in affirming it the appellate court said (p. 573): "The rule refusing a rescission where the contract was made in good faith before inquest does not necessarily prevail if the parties may be placed in statu quo. Inasmuch as

appellant, R. L. Cash, has a purchase money lien against the real estate which will save him harmless the parties [691] may be placed in statu quo. No one a party to this record will suffer by a cancellation of the checks, notes and deed, as directed by the judgment below."

The majority also quote the following from 2 Black on Rescission and Cancellation (§256, p. 726).

"The tendency of the modern decisions is to broaden out the rule above stated, and to refuse rescission or cancellation of any ordinary contract or conveyance of an insane person, if it is shown to be fair, reasonable, based upon an adequate consideration, and beneficial to the afflicted person, although, of course, inadequacy of consideration or any misrepresentations as to value of the subject-matter will be held fatal to such a contract." The first case cited by Black in support of his statement of the law is *National Metal Edge Box Co. v. Vanderveer*, 85 Vt. 488. The first syllabus of this case is as follows: "As a general rule, equity will not set aside the fair and reasonable executed contract of a lunatic, if made in the ordinary course of business on sufficient consideration, of which the lunatic has the benefit, and the parties cannot be placed in their former state, unless the mental condition of the lunatic was known to the other party, or he was chargeable with knowledge of it," and this clearly indicates that Black had no thought of laying down the rule which the majority think should govern the lease of 1905 and the instrument

of 1906. The facts in that case were that Vander-
veer and his wife executed a note and mortgage
to the plaintiff company to secure a loan made by
the latter to the former. The money loaned was
used to pay off a former mortgage against the prop-
erty of the Vanderveers who were being pressed for
payment. The trial court entered a decree foreclos-
ing the mort- [692] gage and this decree on appeal
was affirmed. Under the facts it is clear enough
that equity required that the plaintiff be paid back
the money which it had loaned the lunatic and which
was used for the lunatic's benefit. This was a com-
plete restoration of the plaintiff to its status quo and
was no injustice to the lunatic. But let it be sup-
posed that instead of giving a mortgage to secure
the loan the lunatic, for the same amount of money,
had leased the land for a term of years and be-
fore the expiration of the lease the land had become
of very much greater rental value, far in excess of
the amount paid him. If the suit had, under these
circumstances, been for the purpose of canceling
the lease upon the condition that the lunatic re-
turn to the lessee what he had received I think under
the law as I conceive it and as it was recognized
by the Vermont case, the relief prayed for would
have been granted. Such a decree would afford the
insane person the protection which courts of equity
are zealous to afford persons in that unhappy state
without doing any injustice to an innocent party
who had dealt with the lunatic. This is the great
principle upon which equity deals with contracts.

between lunatics and parties who are innocent and act in good faith. I know of no case which holds that this principle is to be applied only in instances where the insane person receives no benefit and is not to be applied to instances where the insane person does receive benefit.

The rule which I think applies to the lease of 1905 finds support not only in Story and Pomeroy, as I interpret their language, but is also stated as follows in 32 C. J. 734, 735: "According to the weight of authority, however, where there has been no inquisition or adjudication of insanity, a contract, [693] entered into upon an adequate consideration of which the insane person has had the benefit, and made by the other contracting party in good faith, without fraud or undue influence and without knowledge of the insanity or reason to suspect it, will be upheld against the insane person or his representatives, and it cannot be avoided by them, where the parties cannot be put in statu quo. * * * The right to avoid a voidable contract may be exercised where all the parties thereto can be placed in statu quo, and the good faith of the sane party will not prevent its avoidance."

Smoot in his work on *The Law of Insanity*, pp. 284, 285, also states the rule as follows: "The manifest hardships worked by the rule above discussed" (the "void rule") "has led to a different rule in a majority of the states where the contract of one insane is held to be voidable only. This is especially evident in the later decisions. It is contended

with force that it would be highly unjust to allow a person, merely because he is mentally unsound, to enjoy the fruits of a contract without giving something in return, or that an insane person be allowed to recover back what he has attempted to convey without being required to return that which he himself has received thereunder. This is especially true where the contract is reasonable with reference to the advantage accruing under it to the non compos, and been fully executed, and the opposite party cannot be put back into the same position he occupied before the contract was entered into. It therefore, seems to be the better rule, supported by the decisions of the courts of a majority of the states, that a non compos, not under guardianship at the time of the contract in question, will not be allowed to repudiate [694] an executed contract, where the other party to such contract has acted in good faith and without knowledge of such insanity, and cannot be put back in statu quo with reference to the matter, unless it be shown that such other party should be charged with knowledge of the insanity, that the transaction was without adequate consideration, or that there were other circumstances which would render the transaction inequitable. But where such other person can be put back in statu quo, the mere fact that the contract would have been an advantage to it will not prevent its rescission. This rule is denied by the courts of a few states, who insist that the doctrine of innocent purchaser is no defense, even where the luna-

tic's contract is voidable only." See also 14 R. C. L. 584; 46 A. L. R. 419; 34 A. & E. Ann. Cas. (1914D) 867; 1 Williston on Contracts 494-496. The principles announced by these writers have been many times judicially recognized and applied.

In *Czyrson v. Roseau County Nat. Bank*, 172 Minn. 420, Lieberg, an insane person, executed a note and a chattel mortgage to the defendant bank before his insanity had been adjudicated and at a time when he had no guardian. The money loaned by the bank was used to pay off taxes on the lunatic's homestead and to pay interest on a mortgage thereon. Lieberg was subsequently adjudicated insane and his guardian sued to cancel the note and mortgage. The trial court (p. 420) "directed that plaintiff have judgment that the note and mortgage be of no effect against Lieberg provided he or his guardian should pay a stated sum to the defendant, and that if payment should not be made, then that the note and mortgage remain in force." In affirming this judgment the appellate court said [695] (pp. 421, 422): "The fact that one of the parties to a contract is incompetent although he has not been so adjudicated, does not render the contract void but only voidable; and such incompetency is no ground for setting it aside where the other party has no notice of the incompetency and derived no inequitable advantage from it, and where the parties cannot be placed in statu quo. * * * The transaction was an honest one. It was for the benefit of Lieberg. He lost nothing. It would be an injustice for the

bank to lose its money and an unjust advantage would accrue to Lieberg. The circumstances and established facts do away with the fraud that is deemed to result from transactions with incompetent persons when such incompetency is known. It is the purpose of Justice to protect the incompetent, not to arm him to do wrong to others. Under the law the transaction is voidable and the guardian has chosen to have it avoided. Seeking this equitable relief, the court observing the unconscionable result, imposed as a condition precedent that the bank should be paid the full sum which it expended for the purposes mentioned at the solicitation of the wife and son and of which Lieberg's estate received and still has the full benefit. This was proper."

Contracts for necessities are without question highly beneficial to the lunatic. They are nevertheless ordinarily not binding on the lunatic, the party furnishing the necessities being entitled, in order to protect him against injustice, to recover from the lunatic or his estate, on an implied contract, the reasonable value of the necessities furnished him. The rule is thus stated in 32 C. J.: "Generally, when necessities are furnished to a person who by reason of mental incapacity cannot himself make a contract, the law implies an obligation on the part of such person to pay for such necessities out of his own [696] property; his liability for necessities is deemed rather a benefit than a disadvantage to him (Sec. 523, p. 739). "Since the

liability is created by law the amount of the liability ordinarily is limited to the reasonable value of the necessities furnished and not what the insane person may have promised to pay. So there may be a recovery on an express contract for necessities to the extent of their value; and it has been held that one who lends to an insane person may recover to the extent that the money is used for necessities, but no more" (Sec. 524, p. 740).

On this subject Smoot says (§350, p. 289): "A seeming exception to the general rule that the contracts of a non compos are voidable is that which gives force to contracts for the procuring of necessities. Such implied obligation is considered as being merely confirmative of an obligation existing independent of express contracts, since under an implied contract the insane person is liable for the reasonable value of necessities furnished him and his family, if he has one. This seems to be the most universal rule, and has been held to apply to persons adjudged insane, as well as to those not so adjudged, provided, of course, the guardian himself fails to furnish the necessities. The reason for the rule is very apparent and is twofold: (1) As a matter of humanity and public policy, it is necessary that such unfortunates be provided for. Unless there was some provision for recovering the value of the necessities furnished to supply such wants, there would be little likelihood of any one doing so. In such a case, such insane person, however extensive his estate, might be reduced to an

object of charity and want. (2) Under the old rule of equity, that the law will imply a promise to give *quid pro quo*, justice will imply a promise to pay a reason- [697] able equivalent for the benefits actually received, and which are necessary and proper for the insane person's comfort and protection. This has been extended to include material and services furnished for the benefit of his separate estate. It has also been held that, as the services of an attorney may be necessary to protect the property and liberty of the *non compos*, he will be liable for the reasonable value of legal services rendered him by an attorney, but not for any specific amount determined by the promise of the *non compos*." See also 14 R. C. L. §§41, 42, pp. 586-588, and 1 Williston on Contracts, §255, p. 498.

Hancock v. Haile, 171 S. W. (Tex.) 1053, was a case in which the plaintiff, a lunatic, transferred his horses and farming implements to the defendant in consideration of the latter's agreement to care for the former as long as he lived unless the lunatic "should become dangerous and confinement shall become necessary." Under this contract the defendant supplied the lunatic with necessities for almost two years, after which time he was confined in an asylum. Ten years later the lunatic was restored to sanity. After restoration and his release from the asylum he brought an action against the defendant to recover the difference between the value of the property he had delivered to the defendant and the value of the necessities furnished him. The jury

found that the plaintiff was incapable of contracting at the time he transferred his property. The trial court entered judgment for the plaintiff. In affirming this judgment the appellate court said (p. 1055): "It is also well settled that, while an insane person or a minor is bound by his contract for necessities furnished him, the extent of his obligation thereunder is to pay the reasonable value of [698] such necessities, irrespective of the price which he has agreed to pay."

In *Nielsen v. Witter*, 111 Cal. App. 742, and *Estate of Nielsen*, 111 Cal. App. 744, Nielsen, a lunatic, paid \$1500 to the defendant attorney for legal services. Subsequently the guardian of the lunatic brought an action against the attorney for the money paid him. The relief asked was not entirely but partially granted, the court holding that the lunatic was entitled to recover the sum of \$250 which was the difference between the amount he had paid and what the court held to be the reasonable value of the attorney's services.

The principle that is applied in such cases is eminently just and equitable alike to the lunatic and to the party who has furnished him with such things as were reasonably requisite for his support or otherwise essential for his protection. Any other principle would be unjust and inequitable either to the lunatic or to the party dealing with him. For instance, it would be unjust and inequitable to the lunatic, who in his transactions with others is without the capacity to protect himself, to hold

him unconditionally bound by his contracts. It would be equally unjust and inequitable to dismiss, without remedy, the other party who in good faith had made expenditures either of money or services for the support and maintenance of the lunatic or for the protection of his rights. And so courts of equity have evolved the great doctrine under which both parties may be shielded from injury.

Through all the fabric of the law there runs like a red thread this just and equitable thought—if a contract is made by an imbecile with one who is ignorant of the imbecility and [699] the consideration is fair and is for the benefit of the imbecile it is voidable and not void and will be upheld if by setting it aside injustice will be done the innocent party. Such contract will also be upheld when after restoring to the other party what he is justly entitled to the lunatic is no better off than if the contract remained uncanceled. Equity does not trouble to interfere when the result sought would be fruitless. In other words, and to state the thought affirmatively, I think all contracts made by an imbecile should be canceled, even though the other contracting party was ignorant of the imbecility, if it is to the advantage of the imbecile to cancel them and the rights of the innocent party can be adequately protected.

I come now to a discussion of the instrument of 1906. I think this instrument was absolutely void as between Eliza Christian and Annie Kentwell, and being so I think the latter conveyed nothing to

the Waiialua company. The evidence is undisputed that Annie Kentwell took this instrument with full knowledge of Eliza's imbecility. I think therefore that under the view of the law expressed by this court in its former opinion the instrument is void ab initio. In that opinion the court said (p. 873): " * * * We think, also, that if the Waiialua company, or its agents duly authorized to obtain her signature to the deed in question, had actual knowledge of her incompetency or had knowledge of facts which would put a reasonable person upon inquiry, which inquiry if honestly pursued would lead to such knowledge, the deed would, as between the parties, be entirely void."

In *Kendall v. Ewert*, 259 U. S. 139, the Supreme Court of the United States announced and applied this rule in the case [700] of a deed that had been executed by a mentally incompetent grantor whose incompetency was known to the grantee. The deed was canceled without requiring the return of the consideration. The court went even further than this and compelled the grantee to discharge a mortgage lien he had created against the land and to account to the administrator of the grantor for the rents and profits the grantee had received during the lifetime of the grantor.

I can conceive of no reason why the rule should not be applied to the instrument of 1906 as well as to a deed. In my opinion it was not rendered incontestable by the fact that the consideration for its execution was Annie Kentwell's agreement to sup-

port Eliza. Annie Kentwell, as I have already observed in discussing contracts for necessities made by insane persons, would not, however, be left remediless in case she had furnished Eliza with necessary support. The law as established by judicial authority, being a just and righteous concept, would imply an obligation on Eliza's part to adequately reimburse Annie for her expenditures.

I cannot agree with the conclusion of the majority that because the Waialua company was an innocent purchaser Eliza is precluded from asserting her right to set aside this 1906 instrument. Since Annie Kentwell received nothing under this instrument she had nothing to convey to the Waialua company by the deed of 1910.

In *Dexter v. Hall*, referred to by the majority, the court had before it the question of whether a grantee of land who had for a valuable consideration and without notice of the insanity of the owner taken a deed from a prior grantee whose [701] deed was void because of the owner's insanity was protected. The court answered this question in the negative. In other words, the court established the principle that when a conveyance of land is made under circumstances that render it void ab initio a subsequent purchaser from the grantee, although ignorant of the fact which renders the deed to his grantor void and although he paid a valuable consideration for the land, is defenseless in a suit to have the deed which he received canceled. So far as I know this principle has never been aban-

doned or modified by the high tribunal which established it.

In their opinion the majority, in considering the Dexter case, say that Hall, who was the primary grantor, and been judicially adjudged to be a lunatic and was in confinement in a lunatic asylum under judicial commitment. From this the majority conclude that Dexter, who was the purchaser from Hall's grantee, had in contemplation of law notice of Hall's lunacy and therefore was not an innocent purchaser, I respectfully suggest that this conclusion is based on a factual misapprehension. This appears from the brief of Dexter's counsel. In arguing that his client should be protected because he was an innocent purchaser counsel said: "There are certain facts which should be remembered. 1. There was no proof that Hall and Dexter or Hall and Page ever met, or that Page or Dexter knew of or suspected the insanity of Hall, nor is there any evidence of unfairness, fraud, or inadequacy of price. In that case the transaction stands. * * * 3. So far as appeared, Hall had not been placed under a committee, nor had he been pronounced insane by judicial decision, and if that had not been done, his contracts are valid; no undue advantage having been taken of him in ob- [702] taining them. 4. No complaint was made that the consideration was inadequate, or that it was not fully paid by the purchaser. And there was no allegation of fraud in obtaining the power, or in executing the grant." These statements were not challenged by opposing

counsel. Moreover, it nowhere appears in the opinion of the court that Dexter was denied relief because he was not an innocent purchaser but because the original deed of Hall was on account of his insanity void *ab initio*. The conclusion seems to me to be inescapable that when an instrument is void *ab initio* even subsequent innocent claimants under it have no defense in a proceeding to set it aside.

It was the opinion of the court in the former appeal that under the broad powers of equity in partition proceedings the rights of the Waialua company could, upon cancellation of the deed of 1910, be fully secured. I do not understand from the opinion of the majority that there is any recession from this view. Another means of protecting the Waialua company has, however, been substituted. Under the opinion of the majority, if the parties do not make certain factual agreements, the case is to be remanded to the circuit judge with instructions to take testimony, make the necessary findings and enter a decree accordingly. This would entail further expense and delay, which I consider unnecessary. The better course, it seems to me, would be to now enter a final decree which, so far as this jurisdiction is concerned, would end the litigation.

I think the decree appealed from should be affirmed.

[Title of Court and Cause.]

**STIPULATION AND AGREEMENT FOR
PURPOSES OF DECREE TO BE ENTERED.**

Filed Dec. 19, 1934 at 10:40 o'clock a. m. (s) Robert Parker, Jr., Clerk Supreme Court. [704]

WHEREAS, in the decision and opinion of this Court heretofore duly made and entered in the above entitled matter on, to-wit, May 3, 1934, it was provided that if petitioner, Eliza R. P. Christian, and respondent, Waialua Agricultural Company, Limited, could and did agree upon (1) a more specific definition and description of certain lands and rights of way therein provided to be transferred to Waialua Agricultural Company, Limited, and (2) an enumeration and description of improvements made by Waialua Agricultural Company, Limited, prior to May 2, 1910, to revert to Eliza R. P. Christian, as her interest may appear, a final decree would be entered in this Court pursuant to said decision and opinion; and

WHEREAS, the parties hereto have, as herein indicated, so agreed; NOW, THEREFORE,

SOLELY for the purpose of permitting the entry of a final decree in said matter at this time and of avoiding a remand [705] to the Circuit Court for further proceedings, and without waiving any objections which the parties hereto have or may have to the final decree to be entered herein and/or to the decision and opinion of this Court pursuant to which said decree is to be entered and/or to any other action of this Court in the above en-

titled matter, and without prejudice to all errors and imperfections which the parties hereto claim or may claim with respect to the action of this Court in making and entering its said decision and opinion of May 3, 1934, as aforesaid, and in making and entering of its final decree to be entered herein, pursuant to said decision and opinion, and pursuant to the provisions hereof, **IT IS STIPULATED AND AGREED** by the parties hereto that a more specific definition and description of the additional lands and rights of way to be conveyed by Eliza R. P. Christian to Waialua Agricultural Company, Limited, and to be agreed upon pursuant to the provisions of said opinion and decision to permit the entry of a final decree herein is as follows, all being shown on a certain map entitled "Map Showing Land and Improvements thereon situated in the District of Waialua, Oahu, Territory of Hawaii, considered in decision of the Supreme Court of Hawaii, dated May 3, 1934, case No. 2078," hereto attached, marked Exhibit A, and made a part of this stipulation, and more particularly described in certain schedules of descriptions prepared by James B. Mann, hereto annexed, marked Exhibit B, and made a part hereof:

(a) That the land referred to as the land at or near the southeastern end of the Holt lands which is occupied by the waters of the Wahiawa reservoir, together with additional land of sufficient width to permit its reasonable care, [706] maintenance and use, as referred to and described in

subdivision a-1 of paragraph II on page 29 of the typewritten decision and opinion of this Court heretofore entered and filed herein on May 3, 1934, for the purposes of said decree may be more particularly described as said description is set forth on page 98 of said Exhibit B;

(b) That that certain land, being a portion of Grant 235, occupied by the Poamoho pump and its accessories, with additional land reasonably necessary for its convenient and effective care and maintenance, described in subdivision a-2 of paragraph II on page 29 of the typewritten decision and opinion of this Court heretofore entered and filed herein on May 3, 1934, for the purposes of said decree may be more particularly described as said description is set forth on page 69 of said Exhibit B;

(c) That all those portions of the Holt lands which are occupied by reservoirs, dams and camps constructed by the Waialua Agricultural Company, Limited, with additional land as referred to and described in subdivision a-3 of paragraph II on page 29 of the typewritten decision and opinion of this Court heretofore entered and filed herein on May 3, 1934, for the purposes of said decree are the lands set forth and more particularly described on the following pages of said Exhibit B:

Helemano	1 camp	Page 12
Helemano	3 camp	" 13
Helemano	4 camp	" 14
Helemano	6 camp	" 15

Helemano 9 camp	"	16
Helemano 10 camp	"	17
Helemano 12 camp	"	18
Opaaula 9 camp	"	19
Opaaula 10 camp	"	20
Opaaula 11 camp	"	21
Overseer's house	"	22
Helemano upper reservoir	"	88
Helemano 3 reservoir	"	89
Helemano 4-A reservoir	"	90
Helemano 4-A domestic reservoir	"	91
	[707]	
Helemano 6 reservoir	"	92
Helemano 6-B reservoir	"	93
Helemano 9-C reservoir	"	94
Helemano 11 reservoir	"	95
Helemano 12 reservoir	"	96
Portion of Helemano 15 reservoir	"	97

(d) Those lands upon which Waialua Agricultural Company, Limited, has constructed and maintained pumps and their accessories, with additional lands reasonably necessary for their convenient and effective use, as referred to in subdivision a-4 of paragraph II on pages 29 and 30 of the type-written decision and opinion of this Court heretofore entered and filed herein on May 3, 1934, for the purposes of said decree are those lands more particularly described on page 167 of said Exhibit B:

(e) That all those lands, with additional land adjacent thereto, over which rights of way for

ditches, flumes, siphons, pipelines, railroads, roads, electric power lines, telephone lines, and other utilities referred to by the provisions of subdivision (b) of paragraph II on page 30 of the typewritten decision and opinion of this Court heretofore entered and filed herein on May 3, 1934, for the purposes of said decree are those lands more particularly described on the following pages of said Exhibit B:

	Page
For Helemano upper ditch	24-25
" Helemano upper ditch (Poamoho branch)	26
" Helemano upper reservoir inlet ditch	27
" Helemano upper reservoir outlet ditch	28
" Helemano 3 reservoir outlet ditch	29
" Helemano 4-A reservoir outlet ditch north branch	30
" Helemano 4-A reservoir outlet ditch south branch	31
" Helemano 6 reservoir inlet ditch	32
" Helemano 6 reservoir outlet ditch	33
" Helemano 6-B reservoir outlet ditch north branch	34
" Helemano 6-B reservoir outlet ditch south branch	35
" Helemano 11 reservoir outlet ditch	36
" Helemano 12 reservoir inlet ditch	37
" Helemano 12 reservoir outlet ditch	38
" Helemano 15 reservoir inlet ditch	39

	Page
For Kemoo ditch extension	40
" Pump 10 high lift ditch	41
" Pump 10 low lift ditch	42
" Wahiawa ditch extension	43-44
" Waialua Agric. Co. Ltd. domestic water line 9	55
" Waialua Agric. Co. Ltd. domestic water line 10	56
" Waialua Agric. Co. Ltd. domestic water line 11	57
" Waialua Agric. Co. Ltd. domestic water line 12	58
" Waialua Agric. Co. Ltd. domestic water line 13	59
" Waialua Agric. Co. Ltd. domestic water line 14	60
" Waialua Agric. Co. Ltd. domestic water line 15	61
" locomotive water line	62
" pump 10 low lift 24" pipe line	65
" pump 10 high lift 30" pipe line	66
" water line from pump 8	67
" Track A	73
" Track B	74
" Track C	75
" Track D	76-77
" Track E	78
" Track F	79
" Track G	80
" Track H	81

	Page
For Track I	82
" Track J	83
" Track K	84
" Track L	85
" Track M	86
" portable track bed	71
" Road 1	101
" Road 1-A	102
" Road 1-B	103
" Road 1-C	104
" Road 1-D	105
" Road 1-E	106
" Road 1-F	107
" Road 1-G	108
" Road 1-H	109
" Road 1-I	110
" Road 1-J	111
" Road 1-K	112
" Road 1-L	113
" Road 2	114-115
" Road 2-A	116
" Road 2-B	117
" Road 2-C	118
" Road 2-D	119
" Road 2-E	120
" Road 2-F	121
" Road 2-G	122
" Road 2-H	123
" Road 2-I	124

	Page
For Road 2-J	125
" Road 2-K	126
	[709]
" Road 2-L	127
" Road 2-M	128
" Road 2-N	129
" Road 2-O	130
" Road 2-P	131
" Road 2-Q	132
" Road 3	133
" Road 3-A	134
" Road 3-B	135
" Road 3-C	136
" Road 3-D	137
" Road 4	138
" Road 4-A	139
" Road 4-B	140
" Road 4-C	141
" Road 5	142
" Road 5-A	143
" Road 5-B	144
" Road 5-C	145
" Road 5-D	146
" Road 5-E	147
" Road 5-F	148
" Road 6	149
" Road 6-A	150
" Road 6-B	151
" Road 6-C	152

	Page
For Road 7	153
" transmission line 1	155
" transmission line 2	156
" transmission line 3	157
" transmission line 4	158
" transmission line 5	159
" transmission line 6	160
" transmission line 7	161
" transmission line 8	162
" transmission line 9	163
" transmission line 10	164
" transmission line 11	165

IT IS LIKEWISE STIPULATED AND AGREED for the purpose of the entry of a decree herein that:

(a) The areas of the lands set forth in the "Schedule of Lands" appearing on said Exhibit A and in said Exhibit B are as follows:

All of:

Grant 235, Apanas 1

and 2 to Jerome

Topliff and Lewis

Johnson

36.00 acres

Grant 238 to John F.

Anderson and Frank-

lin Davis

25.8 "

Grant 431 to Kauo-

hanui

100.00 "

And Portions of:

R. P. 4475, L. C. Aw.

7713, Apana 34 to
Kamamalu (Bound-
ary Certificate No.
101, Lots 1-12 in-
clusive)

Less Helemano School

Lot 5.0 12,018.44 acres

Grant 973 to James
Robinson, Robert
Lawrence and Rob-
ert W. Holt

1,765.53 " more or
less

TOTAL AREA

13,945.77 acres, more
or less;

and that wherever in the record, pleadings, ex-
hibits or testimony heretofore had in said cause,
areas of the lands in controversy appear, the same
are hereby amended and corrected to conform to the
areas above set forth.

(b) In the legend of said map, Exhibit A, the
item "Camps" includes 65.1 acres not included in
this stipulation which are Hawaiian Pineapple
Company camps, and the item "Domestic Water
Lines" includes 6.4 acres not included in this stipu-
lation which are Hawaiian Pineapple Company
water lines. The item "Roads" includes all roads
on the properties in question, whether used by
Waialua Agricultural Company, the Hawaiian

Pineapple Company, or by both jointly, all of which roads have been included in this stipulation so that and with the intent that the present interest and right of user of Waialua Agricultural Company, Limited, with respect thereto may be protected in said Waialua Agricultural Company, Limited, as its rights and interests may appear.

IT IS FURTHER STIPULATED AND AGREED that an enumeration and description of the improvements made by the Waialua Agricultural Company prior to May 2, 1910, together with sub- [711] sequent additions, renewals, or replacements thereto, so far as such additions, renewals or replacements can at this time be accurately described, is as follows, reference being made in each instance to the lands on which said improvements are situated as described on the following pages of Exhibit "B"; IT BEING STIPULATED AND AGREED that a final decree may and shall be entered by this court herein upon the facts herein stipulated to and upon such other or further facts as may to the satisfaction of this court appear from the record herein:

CAMPS:

HELEMANO No. 3, built 1906, originally consisting of five wooden frame houses and one bath house; same number houses remaining April 1, 1930; three houses retired in 1934, leaving two houses and 1 bath house

Page

OPAEULA No. 9, built 1908 and 1909, consisting of 13 houses and 1 bath house; all remaining; ceilings installed in all houses in 1929 at cost of \$1500, and wired for electricity about 1922..... 19

OPAEULA No. 10, built 1908 and 1909, consisting of nine houses and 1 bath house, all remaining April 1, 1930; ceilings installed in all houses 1929 at cost of \$800; wired for electricity in 1931; one house retired 1934 20

HELEMANO OVERSEER'S HOUSE, built in 1905..... 22

RAILROADS:

TRACK A, of which 1200 feet built in 1906 and 2400 feet after 1910. Track originally consisted of 25-lb. rails, all of which have been replaced since 1910 with 35-lb. rails. All ties have been replaced since 1910 73

TRACK E, built in 1906 with 25-lb. rails; replaced by 35-lb. rails since 1910; all ties likewise replaced since 1910..... 78

[712]

TRACK F, built in 1906, with 25-lb. rails; replaced by 35-lb. rails since 1910; all ties likewise replaced since 1910..... 79

TRACK I, 1300 feet, built in 1906; 6300 feet in 1909, and the balance in 1913; original construction all 25-lb. rails since 1910 replaced with 35-lb. rails; all ties replaced since 1910 82

TRACK J, built 1906 with 25-lb. rails; replaced with 35-lb. rails since 1910; all ties replaced since 1910..... 83

TRACK L, built 1906 with 25-lb. rails; replaced with 35-lb. rails since 1910; all ties replaced since 1910..... 85

TRACK M, built 1908 with 25-lb. rails; replaced with 35-lb. rails since 1910; all ties replaced since 1910. This track is a storage track, being abandoned as a railroad in 1929 86

DAMS AND RESERVOIRS:

HELEMANO #4-A, (domestic reservoir) built in 1905..... 91

HELEMANO #3, built in 1906..... 89

HELEMANO #6, built in 1908; spillway enlarged in 1924 at cost of \$1275..... 92

SIPHONS:

HELEMANO 54", built 1906; new concrete piers installed 1924, replacing old rubble piers; blow-off valve installed 1927; total cost since 1910 and prior to April 1, 1930—\$3959.96 43 and 44

OPAEULA 54", built 1906..... 43 and 44

[713]

DITCHES:

WAHIAWA DITCH EXTENSION, built in 1906; \$1980 spent in 1931, replacing flumes across the gulch at Helemano #6 Reservoir..... 43

Page

HELEMANO UPPER DITCH, built 1908; enlarged from 4'6" in width to 6'6" at various times from 1912-1924 at a total cost since 1910 of \$10,159..... 24

HELEMANO UPPER POAMOHO BRANCH, built in 1909 and 1910; wooden flume carrying the water over the gulch was replaced in 1925 by an Armco flume costing \$2582..... 26

HELEMANO LOWER DITCH, built in 1905, and abandoned in 1907.....

WATERWAYS:

HELEMANO #6 RESERVOIR IN-LET DITCH, built in 1908..... 32

HELEMANO #6 RESERVOIR OUT-LET DITCH, built in 1908..... 33

HELEMANO #3 RESERVOIR OUT-LET DITCH, built in 1906..... 29

ROADS, BRIDGES AND FENCES:

ALL OF THE ROADS BELOW THE WAHIAWA DITCH EXTENSION (except Road 1-B) as shown on the map, Exhibit A, were built by Waialua Agricultural Company prior to 1910. THE ROADS ABOVE THE WAHIAWA DITCH were built at various times both by the Waialua Agricultural Company and the Hawaiian Pineapple Company, identification now being practically impossible.

ABOVE THE WAHIAWA DITCH the Waialua Company built a part of Road #3 (page 133), being the portion of the road between the Helemano Upper Reservoir Outlet Ditch and the Poamoho Stream, since 1910; also where the Helemano Upper Reservoir Outlet Ditch crosses Road #3 the [714] old bridge was torn out by Waialua and replaced by a concrete bridge in 1934; likewise above the ditch the bridge or culvert on Road 2-J (page 125) was replaced by a concrete bridge or culvert in 1923.

BELOW THE WAHIAWA DITCH EXTENSION Road 1-B from the Opaeula Gulch to Helemano at Station #3, was built in 1915 by Waialua (page 103).

**CLEARING OF CANE LANDS.
SOME TELEPHONE LINES.**

Dated: Honolulu, T. H., December 19th, 1934.

ELIZA R. P. CHRISTIAN,

an incompetent person,

By HERMAN V. VON HOLT,

her Guardian,

Petitioner-Appellee,

By (s) BARRY S. ULRICH,

By (s) CHAS. M. HITE,

Her Attorneys.

WAIALUA AGRICULTURAL COMPANY,
LIMITED, an Hawaiian corporation,

By ROBERTSON & CASTLE,

[Seal] By (s) ALFRED L. CASTLE,

Its Attorneys.

Approved:

(s) CHARLES F. PARSONS,
Associate Justice Supreme Court of the
Territory of Hawaii. [715]

In the Supreme Court of the Territory of Hawaii.
October Term, 1934.

No. 2078.

Appeal From Circuit Judge First Circuit.

ELIZA R. P. CHRISTIAN, an incompetent person,
by HERMAN V. von HOLT, her Guardian,
Petitioner,

vs.

WAIALUA AGRICULTURAL COMPANY,
LIMITED, and Hawaiian Corporation, James
L. Holt and Annie Holt Kentwell,
Respondents.

STATEMENT OF DISQUALIFICATION BY
CHIEF JUSTICE COKE.

Filed January 18, 1935 at 9:00 o'clock A. M.
(s) Gus K. Sproat, Deputy Clerk Supreme Court.
[716]

At the time the above entitled cause was pending in the Circuit Court I was employed by Annie Holt Kentwell, one of the respondents in said cause, to act as her attorney therein; I accepted said em-

ployment and performed services for her in connection with said proceeding, for which I expect to receive remuneration. The services performed did not necessitate the entry of my name of record in said cause as the attorney for Mrs. Kentwell but my connection with the case, as her attorney, clearly disqualifies me from sitting as a member of the Supreme Court of Hawaii in the hearing of said cause on appeal and I therefore suggest my disqualification in the hearing and disposition of the above cause.

Dated at Honolulu, Hawaii, January 18, 1935.

(s) JAMES L. COKE,

Chief Justice Supreme Court of Hawaii. [717]

[Title of Court and Cause.]

REQUEST FOR A SUBSTITUTE JUSTICE.

To Honorable Norman D. Godbold, First Judge Circuit Court First Circuit:

Mr. Chief Justice James L. Coke being disqualified to sit with us in the above entitled cause, we, the remaining Justices of the Supreme Court, hereby request and authorize you to sit with us and hear and determine said cause.

Dated the 18th day of January, 1935.

(s) JAS. J. BANKS,

(s) CHARLES F. PARSONS.

Attest:

(s) GUS K. SPROAT,
Deputy Clerk.

Filed January 18, 1935 at 10:00 o'clock A. M.

(s) Gus K. Sproat, Deputy Clerk. [718]

In the Supreme Court of the Territory of Hawaii.

No. 2078.

At Chambers

In Equity

Appeal from Decree of Circuit Judge,
First Judicial Circuit.

Hon. A. M. Cristy, Second Judge, Presiding.

ELIZA R. P. CHRISTIAN, an incompetent person,
by HERMAN V. VON HOLT, her Guardian,
Petitioner-Appellee,

v.

WAIALUA AGRICULTURAL COMPANY, LIM-
ITED, an Hawaiian corporation, JAMES L.
HOLT, and ANNIE HOLT KENTWELL,
Repondent-Appellants.

DECREE.

Filed March 25, 1935 at 12:10 o'clock P. M.

(s) Robert Parker, Jr., Clerk Supreme Court. [719]

The above entitled cause having come duly on for
argument in this court upon an appeal duly taken

and perfected by Waialua Agricultural Company, Limited, an Hawaiian corporation, respondent-appellant herein, from the decree duly made and entered in said cause by the Honorable Albert M. Cristy, Presiding Judge of the Circuit Court of the First Judicial Circuit, Territory of Hawaii, in equity, on the 6th day of September, A. D. 1932, A. L. Castle, Esq., of the firm of Robertson & Castle, and Herman Phleger, Esq., of the firm of Brobeck, Phleger & Harrison, appearing for said respondent-appellant, and Barry S. Ulrich, Esq., and Charles M. Hite, Esq., of the firm of Ulrich & Hite, appearing for Eliza R. P. Christian, an incompetent person, by Herman V. von Holt, her guardian, petitioner-appellee; and this court having, on May 3, 1934, made, entered and filed its written opinion herein containing its findings of fact and conclusions and rulings of law; and thereafter, pursuant to said opinion and for the purpose of avoiding a remand, the parties hereto agreed to a more specific description of lands, easements and improvements by written stipulation [720] filed herein December 19, 1934, entitled "Stipulation and Agreement for Purposes of Decree to be Entered," as therein more particularly set forth;

NOW, THEREFORE, in pursuance and effectuation of said opinion and of the findings of fact and conclusions and rulings of law so set forth therein as aforesaid, and of the stipulation hereinbefore referred to; IT IS HEREBY ORDERED:

I.

That that certain decrees heretofore made and entered by the Honorable A. M. Cristy on September 6, 1932, being the decree herein appealed from, be and the said decree is hereby reversed and set aside.

II.

That subject to the performance or offer of performance made by Eliza R. P. Christian of the terms, conditions and provisions of this decree to be performed by her, that certain deed dated May 2, 1910, by and between John Dominis Holt, Eliza R. P. Christian, Annie Holt Kentwell and Lawrence K. Kentwell, therein named as grantors, and James L. Holt, therein named as grantee, a copy of which deed is annexed to the amended petition on file herein and made a part thereof and marked Exhibit "B", be and said deed is hereby declared and judged cancelled, annulled and void, and of no effect as to Eliza R. P. Christian named as grantor therein, being the same Eliza R. P. Christian appearing herein as petitioner-appellee by her duly appointed guardian. [721]

III.

That respondent Waialua Agricultural Company, Limited, upon the payment to it of the sum of \$30,000.00, together with interest thereon at the rate of 6% per annum from May 2, 1910, to the date of the reconveyance hereinafter referred to, or upon the giving to Waialua Agricultural Company, Limited,

by said Eliza R. P. Christian of a good and sufficient first mortgage satisfactory to the said Waialua Agricultural Company, Limited, or to a court having jurisdiction in the premises upon the interest and property restored and conveyed to her pursuant to this decree, as security for the payment of said sum of \$30,000.00, together with interest thereon as aforesaid, or upon assurance to the said Waialua Agricultural Company, Limited, of the payment of said sum with interest as aforesaid, satisfactory to said Waialua Agricultural Company, Limited, or to a court having jurisdiction in the premises, shall by good and sufficient deed, which deed shall be joined in by the said Eliza R. P. Christian, quitclaim and reconvey to the said Eliza R. P. Christian, petitioner-appellee herein, upon the terms and conditions of this decree and subject to the exceptions and reservations in fee simple in favor of the said Waialua Agricultural Company, Limited, hereinafter set forth, all of the property and interest therein which the said Waialua Agricultural Company, Limited, acquired from her under and by virtue of the aforesaid deed of May 2, 1910, being an undivided one-third interest in fee simple, unencumbered, in and to all the following described real property, together with all improvements thereon situated, said property being [722] situated in the District of Waialua, City and County of Honolulu, Territory of Hawaii, and more particularly described as follows:

All of:

Grant 235, Apanas 1 and 2 to Jerome Topliff and Lewis Johnson	36.0	acres
Grant 238 to John F. Anderson and Franklin Davis	25.8	"
Grant 431 to Kauohanui	100.0	"

And Portions of:

R. P. 4475, L. C. Aw. 7713, Apana 34 to V. Kawamalu (Boundary Certificate No. 101, Lots 1-12 inclusive)	12,018.44	"
Grant 973 to James Robinson, Robert Lawrence and Robert W. Holt	1,765.53	"
	more or less	

TOTAL AREA	13,945.77	"
	more or less	

EXCEPTING AND RESERVING therefrom unto the said Waialua Agricultural Company, Limited, in fee simple the real properties, easements, or other interests therein set forth and described in Paragraph IV hereof, being shown on a certain map entitled "Map Showing Land and Improvements thereon situated in the District of Waialua, Oahu, Territory of Hawaii, considered in decision of the Supreme Court of Hawaii, dated May 3, 1934, Case No. 2078," hereto attached, marked Exhibit "A", and made a part of this decree, together with the improvements designated in said Paragraph IV; and the real properties, easements, or other interests therein set forth and described in an exhibit entitled "Descriptions of Permanent Rights of Way," hereto attached, marked Exhibit "B", and made a part of this decree, such exhibit consisting of separate schedules, marked respec-

tively Schedules 1 to 10 inclusive, each description being identified by appropriate reference to said map, Exhibit "A", together with the improvements [723] designated in said Exhibit "B";

Said deed shall contain sufficient provisions assuring to Eliza R. P. Christian such rights-of-way in her behalf as may be reasonably necessary, over, under or across each ditch, flume, siphon, pipe line, railroad, electric power line, telephone line and other utility, constructed and maintained by Waialua Agricultural Company, Limited, on the Holt lands as aforesaid, for the purpose of assuring to Eliza R. P. Christian from Waialua Agricultural Company, Limited, such rights-of-way over, under or across said utilities mentioned above as may be reasonably necessary for access by Eliza R. P. Christian and those acting under her, from each part of the common Holt lands which may be awarded to her on partition to each other part of the Holt lands which may be likewise awarded to her on partition, as well as access by her over, under or across each such utility from or to any nearby public highway to or from any part of the lands so awarded to her on partition.

IV.

That the improvements, real properties, easements and other interests therein to be excepted, and reserved to and to belong to Waialua Agricultural Company, Limited, in fee simple and ab-

solutely referred to in the foregoing Paragraph III are the properties set forth in said Exhibit "B", and (1) the following described real properties, easements and improvements:

WAHIAWA RESERVOIR.

Initial Point in Block 30.

Beginning at the West corner of this piece of land, at the 860 foot contour line on the boundary between Grant 973 to James Robinson, Robert Lawrence and Robert W. Holt and Land Court Application 262, the true azimuth and distance from the end of Course 10 of Land Court Application 262 being 135° 20' 430 feet more or less, and running:

1. Northeasterly 960 feet more or less along the 860 foot contour line; [724]
2. Easterly 1880 feet more or less along the 860 foot contour line;
3. Southeasterly 80 feet more or less along the Westerly side of Grant 1092 to Paaluh;
4. Southwesterly 400 feet more or less along the Southerly side of North Branch of Kaukonahua Stream;
5. Westerly 2220 feet more or less along the Southerly side of North Branch of Kaukonahua Stream;
6. Northwesterly 170 feet more or less along Land Court Application 262 to the point of beginning; Containing an area of 7.0 acres more or less.

Being shown on a certain map entitled "Map Showing Land and Improvements thereon situated

in the District of Waialua, Oahu, Territory of Hawaii, considered in decision of the Supreme Court of Hawaii, dated May 3, 1934, case No. 2078," hereto attached, marked Exhibit A, and made a part of this decree; this being, by stipulation of the parties, the land at or near the southeastern end of the Holt lands which is occupied by the waters of the Wahiawa reservoir when the waters in that reservoir reach to the top of the spillway of the Wahiawa dam, together with additional land along the northwestern or Holt side of the Wahiawa reservoir when at its extreme height, of a sufficient width to permit of reasonable care, maintenance and use of the reservoir along that side; (2) the following described real property to-wit:

PUMP 10 SITE.

Initial Point in Block 5.

Beginning at the North corner of this piece of land in the middle of Poamoho Stream, the direct azimuth and distance from the center of a 12' x 12' shaft being 152° 00' 300 feet more or less, the coordinates of the center of said shaft referred to [725] Government Survey Triangulation Station "Halemano" being 7,640 feet North and 21,650 feet West, and running:

1. Southeasterly 400 feet more or less along the middle of Poamoho Stream;
2. Southwesterly 400 feet more or less;
3. Northwesterly 400 feet more or less;
4. Northeasterly 400 feet more or less to the point of beginning;

Containing an area of 3.8 acres more or less;

together with all the improvements thereon located.

Being shown on said map Exhibit A; being all of that portion of Grant 235 which is occupied by the Poamoho pump and its accessories and as much more as may be reasonably necessary for the convenient and effective care, maintenance and use of that pump and its accessories; (3) all of the following described real property, to-wit:

HELEMANO 1 CAMP.

Initial Point in Block 1.

Beginning at the Southwest corner of this piece of land, on the Northeasterly side of Road 2, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Halemano" beginning 12,970 feet North and 21,770 feet West, and running:

1. Northeasterly 100 feet more or less;
2. Southeasterly 190 feet more or less;
3. Southwesterly 120 feet more or less to the Northerly side of Road 2;
Thence
4. Northwesterly 190 feet more or less along the Northerly side of Road 2 to the point of beginning;
Containing an area of 0.60 acre more or less;

together with all the improvements thereon located.

HELEMANO 3 CAMP.

Initial Point in Block 5.

Beginning at the Southeast corner of this piece of land, on the Northerly side of Road 2, the coordinates of said point of beginning referred to Government [726] Survey Triangulation Station "Halemano" being 10,620 feet North and 18,160 feet West, and running:

- | | |
|------------------|--|
| 1. Westerly | 150 feet more or less along the
Northerly side of Road 2; |
| 2. Northerly | 100 feet more or less; |
| 3. Southeasterly | 160 feet more or less; Thence |
| 4. Southerly | 50 feet more or less to the point
of beginning; |
- Containing an area of 0.3
acre more or less.

HELEMANQ 4 CAMP.

Initial Point in Block 5.

Beginning at the end of Course 31 of Boundary Certificate No. 101 on the boundary between Paalaa-Uka and Paukauila, and running:

- | | |
|------------------|---|
| 1. Northwesterly | 225 feet more or less along the
boundary between Paa-
laa-Uka and Paukauila; |
| 2. Northeasterly | 570 feet more or less; Thence |
| 3. Southeasterly | 240 feet more or less; Thence |
| 4. Southerly | 630 feet more or less to the bound-
ary between Paalaa-Uka
and Paukauila; Thence |
| 5. Northwesterly | 360 feet more or less along the
boundary between Paa-
laa-Uka and Paukauila to
the point of beginning; |
- Containing an area of
5.4 acres more or less;

together with all the improvements thereon located.

HELEMANO 6 CAMP.

Initial Point in Block 6.

Beginning at the Southwest corner of this piece of land on the Northerly side of Road 2, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Halemano" being 8,790 feet North and 14,450 feet West, and running:

1. Northeasterly 420 feet more or less;
2. Southeasterly 280 feet more or less;
3. Southerly 160 feet more or less;
4. Southwesterly 330 feet more or less along Track I to the Northerly side of Road 2; Thence

[727]

5. Northwesterly 270 feet more or less along the Northerly side of Road 2 to the point of beginning;

Containing an area of 3.0 acres more or less;

together with all the improvements thereon located.

HELEMANO 9 CAMP.

Initial Point in Block 13.

Beginning at the South corner of this piece of land, on the Northeasterly side of Road 2-E, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Halemano" being 4,540 feet North and 11,030 feet West, and running:

1. Northwesterly 90 feet more or less along the Northeasterly side of Road 2-E;
2. Northeasterly 90 feet more or less;
3. Southeasterly 90 feet more or less; Thence
4. Southwesterly 90 feet more or less to the point of beginning;

Containing an area of 0.2 acre more or less;

together with all the improvements thereon located.

HELEMANO 10 CAMP.

Initial Point in Block 21.

Beginning at the Northerly corner of this piece of land, on the Southwesterly side of Road 3-B, the coordinates of

said point of beginning referred to Government Survey Triangulation Station "Halemano" being 4,090 feet South and 3,430 feet East, and running:

1. Southeasterly 230 feet more or less along the Southwesterly side of Road 3-B;
2. Westerly 250 feet more or less;
3. Northwesterly 110 feet more or less; Thence
4. Northeasterly 230 feet more or less to the point of beginning;

Containing an area of 0.8 acre more or less;

together with all the improvements thereon located.

[728]

HELEMANO 12 CAMP:

Initial Point in Block 13.

Beginning at the Southwest corner of this piece of land, about 40 feet more or less Northwesterly from Road 2-K, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Halemano" being 3,300 feet North and 6,580 feet West, and running:

1. Northerly 200 feet more or less;
2. Easterly 170 feet more or less;
3. Southerly 150 feet more or less; Thence
4. Westerly 180 feet more or less to the point of beginning;

Containing an area of 0.7 acre more or less;

together with all the improvements thereon located.

OPAEULA 9 CAMP.

Initial Point in Block 2.

Beginning at the East corner of this piece of land, on the Northerly side of Road 1, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Halemano" being 13,470 feet North and 16,070 feet West, and running:

1. Southwesterly 400 feet more or less across the road; Thence
2. Northwesterly 270 feet more or less to the Southerly side of Road 1; Thence
3. Northeasterly 300 feet more or less along the Southerly side of Road 1; Thence
4. Southeasterly 350 feet more or less along the Southerly side of Road 1 to the point of beginning;

Containing an area of 2.5 acres more or less.

OPAEULA 10 CAMP.

Initial Point in Block 3.

Beginning at the Southwest corner of this piece of land, on the Northerly side of Road 1, the coordinates of said point of beginning referred to Government [729] Survey Triangulation Station "Halemano" being 12,170 feet North and 11,610 feet West, and running:

1. Northerly 270 feet more or less; Thence
2. Easterly 160 feet more or less;
3. Southeasterly 310 feet more or less to Road 1; Thence
4. Westerly 280 feet more or less along the Northerly side of Road 1 to the point of beginning;

Containing an area of 1.3 acres more or less.

OPAEULA 11 CAMP.**Initial Point in Block 7.**

Beginning at the West corner of this piece of land, on the Northeasterly side of Road 1, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Halemano" being 10,950 feet North and 6,590 feet West, and running:

1. Northeasterly 70 feet more or less;
2. Southeasterly 100 feet more or less;
3. Southwesterly 70 feet more or less; Thence
4. Northwesterly 100 feet more or less along the Northeasterly side of Road 1 to the point of beginning;

Containing an area of 0.1 acre more or less;

together with all the improvements thereon located.

OVERSEER'S HOUSE.**Initial Point in Block 1.**

Beginning at the West corner of this piece of land, on the Northeasterly side of Road 2, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Halemano" being 12,370 feet North and 20,910 feet West, and running:

1. Northeasterly 100 feet more or less;
2. Southeasterly 110 feet more or less;
3. Southwesterly 100 feet more or less; Thence
4. Northwesterly 100 feet more or less along the Northeasterly side of Road 2 to the point of beginning;

Containing an area of 0.3 acre more or less.

HELEMANO UPPER RESERVOIR.**Initial Point in Block 21.**

Beginning at the Northwest corner of this piece of land, on the 990 foot contour line, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Halemano" being 4,210 feet South and 3,580 feet East, and running:

1. Northeasterly 1770 feet more or less along the 990 foot contour line;
2. Easterly 1500 feet more or less along the 990 foot contour line;
3. Southwesterly 540 feet more or less along the 990 foot contour line;
4. Westerly 1050 feet more or less along the 990 foot contour line;
5. Southwesterly 1700 feet more or less along the 990 foot contour line;
6. Southwesterly 60 feet more or less across Road 3-B to toe of dam;
Thence
7. Northwesterly 400 feet more or less along toe of dam;
8. Northeasterly 60 feet more or less across Road 3-B to the point of beginning;

Containing an area of 27.0 acres more or less;

together with all the improvements thereon located.

HELEMANO 3 RESERVOIR.

Initial Point in Block 1.

Beginning at toe of dam at the Southwest corner of this piece of land, on the Westerly side of Track C, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Halemano" being 14,150 feet North and 20,380 feet West, and running:

- | | |
|--------------|---|
| 1. Westerly | 170 feet more or less along toe of dam; Thence |
| 2. Northerly | 210 feet more or less along toe of dam; Thence |
| 3. Easterly | 170 feet more or less along toe of dam to the Westerly side of Track C; Thence |
| 4. Southerly | 220 feet more or less along the Westerly side of Track C to the point of beginning; |

Containing an area of 1.4 acres more or less.

[731]

HELEMANO 4-A RESERVOIR.

Initial Point in Block 6.

Beginning at toe of dam, on the Southeast corner of this piece of land near the Kemoo Ditch Extension, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Halemano" being 9,630 feet North and 17,600 feet West, and running:

1. Westerly 250 feet more or less along toe of dam;
2. Northerly 260 feet more or less along toe of dam;
3. Easterly 20 feet more or less along toe of dam; Thence
4. Southerly 270 feet more or less to the point of beginning;

Containing an area of 1.7 acres more or less;

together with all the improvements thereon located.

HELEMANO 4-A. DOMESTIC RESERVOIR.

Initial Point in Block 6.

Beginning at toe of dam, on the Southeast corner of this piece of land, the coördinates of said point of beginning referred to Government Survey Triangulation Station "Halemano" being 10,330 feet North and 17,600 feet West, and running:

1. Westerly 80 feet more or less along toe of dam; Thence
2. Northerly 140 feet more or less along toe of dam; Thence
3. Easterly 80 feet more or less along the Southerly side of road; Thence
4. Southerly 110 feet more or less to the point of beginning;

Containing an area of 0.2 acre more or less.

HELEMANO 6 RESERVOIR.

Initial Point in Block 13.

Beginning at the 685 foot contour line on the Northerly side of this piece of land, on the Easterly side of Road 2-J, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Halemano" being 5,250 feet North and 8,800 feet West, and running: [732]

1. Northeasterly 640 feet more or less along the 685 foot contour line; Thence
2. Southerly 1400 feet more or less along the 685 foot contour line; Thence
3. Northwesterly 870 feet more or less along the 685 foot contour line to the Easterly side of Road 2-J; Thence
4. Westerly 50 feet more or less across Road 2-J to toe of dam; Thence
5. Northerly 420 feet more or less along toe of dam; Thence
6. Easterly 40 feet more or less across Road 2-J to the point of beginning;

Containing an area of 7.0 acres more or less.

HELEMANO 6-B RESERVOIR.

Initial Point in Block 6.

Beginning at toe of dam at the Southwest corner of this piece of land, on the Northeasterly side of Road 2, the coordinates of said point of beginning referred to Government

Survey Triangulation Station "Halemano" being 8,900 feet North and 14,650 feet West, and running:

1. Northerly 200 feet more or less along toe of dam; Thence
 2. Easterly 360 feet more or less along toe of dam to the Northwest side of Helemano 6 Camp; Thence
 3. Southwesterly 260 feet more or less to the Northeasterly side of Road 2; Thence
 4. Northwesterly 220 feet more or less along the Northeasterly side of Road 2 to the point of beginning;
- Containing an area of 2.1 acres more or less;

together with all the improvements thereon located.

HELEMANO 9-C RESERVOIR.

Initial Point in Block 2.

Beginning at the Northeast corner of this piece of land, on the Southwesterly side of Road 1, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Halemano" being 13,090 feet North and 15,450 feet West, and running: [733].

1. Southwesterly 250 feet more or less along upper side of reservoir; Thence
2. Northwesterly 300 feet more or less along toe of dam; Thence
3. Northeasterly 250 feet more or less along toe of dam to the Southerly side of Road 1; Thence

4. Southeasterly 250 feet more or less along the Southerly side of Road 1 to the point of beginning;
 Containing an area of 1.7 acres more or less;

together with all the improvements thereon located.

HELEMANO 11 RESERVOIR.

Initial Point in Block 7.

Beginning at the 675 foot contour line on the Northerly side of this piece of land, on the Easterly side of Road 1-F, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Halemano" being 10,840 feet North and 6,570 feet West, and running:

1. Southeasterly 420 feet more or less along the 675 foot contour line;
Thence
2. Southeasterly 1000 feet more or less along the 675 foot contour line;
Thence
3. Southwesterly 200 feet more or less along the 675 foot contour line;
4. Northwesterly 800 feet more or less along the 675 foot contour line;
5. Northerly 400 feet more or less along the 675 foot contour line to the Easterly side of Road 1-F; Thence
6. Westerly 60 feet more or less across Road 1-F to toe of dam;
Thence

7. Northerly 300 feet more or less along toe of dam to the Westerly side of Road 1-F; Thence
8. Easterly 70 feet more or less across Road 1-F to the point of beginning;
Containing an area of 7.3 acres more or less;

together with all the improvements thereon located. [734]

HELEMANO 12 RESERVOIR.

Initial Point in Block 13.

Beginning on the 810 foot contour line at the Southwest corner of this piece of land, on the Southeasterly side of Road 2-K, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Halemano" being 3,050 feet North and 6,670 feet West, and running:

1. Northwesterly 60 feet more or less across Road 2-K to toe of dam;
Thence
2. Northeasterly 200 feet more or less along toe of dam; Thence
3. Southeasterly 100 feet more or less across Road 2-K to the 810 foot contour line; Thence
4. Southeasterly 950 feet more or less along the 810 foot contour line;
Thence
5. Northwesterly 1000 feet more or less along the 810 foot contour line to the point of beginning;
Containing an area of 2.2 acres more or less;

together with all the improvements thereon located.

BEING A PORTION OF HELEMANO 15 RESERVOIR.

Initial Point in Block 19.

Beginning on the 800 foot contour line at the East corner of this piece of land, on the boundary between Grant 431 to Kauohanui and Land Court Application 269, the true azimuth and distance from the initial point of Land Court Application 269 being $10^{\circ} 00'$ 2270 feet more or less, and running:

1. Southerly 130 feet more or less along Land Court Application 269 to the 800 foot contour line; Thence along the 800 foot contour line, the direct azimuth and distance being:
 2. Northwesterly 880 feet more or less to the Westerly boundary of Grant 431 to Kauohanui; Thence
 3. Northerly 320 feet more or less along the Westerly side of Grant 431 to Kauohanui to the 800 foot contour line; Thence along the 800 foot contour line to the point of beginning, the direct azimuth and distance being:
- [735]
4. Southeasterly 940 feet more or less; Containing an area of 4.3 acres more or less;

together with all the improvements thereon located.

Being shown on said map Exhibit A; being those portions of the Holt lands which are occupied by reservoirs, dams and camps constructed by the Waialua Agricultural Company, Limited, and as much additional land adjoining each of said reservoirs (including dams) and camps on all sides thereof as is reasonably necessary for the convenient and effective care, maintenance and use thereof; and (4) all the following described real property, to-wit:

PUMP 3 WELL SITE.

Initial Point in Block 1.

Beginning at the North corner of this piece of land in the middle of Opaepa Stream, the direct azimuth and distance from the center of a 6' circular shaft located about 90 feet South of Opaepa Stream being $165^{\circ} 00'$ 130 feet more or less, the coordinates of the center of said shaft referred to Government Survey Triangulation Station "Halemano" being 15,610 feet North and 18,240 feet West, and running:

- | | |
|------------------|--|
| 1. Southeasterly | 340 feet more or less along middle of Opaepa Stream; |
| 2. Southwesterly | 120 feet more or less; |
| 3. Northwesterly | 320 feet more or less; |
| 4. Northerly | 120 feet more or less to the point of beginning; |

Containing an area of 0.9 acre more or less;

together with all the improvements thereon located.

Being shown on said map Exhibit A; being those portions of the Holt lands upon which Waialua Agricultural Company, Limited, has constructed and maintains pumps and their [736] accessories, and as much land wholly around each of said pumps and accessories as is reasonably necessary for the convenient and effective care, maintenance and use of said pumps.

V.

That the petitioner, Eliza R. P. Christian, is not entitled to any award of rents or damages in this suit and that she take nothing herein by way of money judgment, for rents or damages against the respondent-appellant Waialua Agricultural Company, Limited.

VI.

That that certain lease dated March 17, 1905, by and between Carlos A. Long, et al., and Waialua Agricultural Company, et al., being Exhibit "F" attached to the second amended petition herein and having been introduced in evidence herein as Exhibit "A-8", is in all respects valid; and that petitioner-appellee Eliza R. P. Christian is not entitled to have the said lease canceled.

VII.

That that certain instrument dated August 31, 1906, by and between Eliza R. P. Christian and Annie Holt Kentwell, being Exhibit "G" attached to the second amended petition herein and having been introduced in evidence herein as Exhibit "2-G," is in all respects valid only as an as-

signment of rents, issues and profits from the land but not as a conveyance of an estate or interest in the land, and that petitioner-appellee is not entitled to have said instrument canceled. [737]

VIII.

That said instrument dated August 31, 1906, referred to in Paragraph VII hereof, conveyed all rents, issues and profits from the land described in the deed of May 2, 1910 (referred to in Paragraph II hereof), which have accrued or will accrue to Eliza R. P. Christian, whether under the lease dated March 17, 1905, referred to in Paragraph VI hereof, or otherwise, and from whomsoever due, from August 31, 1906, the date of said instrument, until the end of the natural life of her, the said Eliza R. P. Christian, and that the respondent-appellant, Waialua Agricultural Company, Limited, is the owner of all said rents, issues and profits so conveyed; provided, however, Waialua Agricultural Company, Limited, shall pay all taxes and lawful assessments upon or against said land during the lifetime of the said Eliza R. P. Christian.

Dated, Honolulu, T. H., this 25th day of March, 1935.

By the Court:

[Seal]

ROBERT PARKER JR.

Clerk.

Approved as to form.

CHARLES M. HITE

Attorney for

E. R. P. Christian

Approved:

CHARLES F. PARSONS

Associate Justice. [738]

EXHIBIT B.

DESCRIPTION OF PERMANENT
RIGHTS OF WAY.

SCHEDULE 1—DITCHES.

WAHIAWA DITCH EXTENSION.

Initial Point in Block 13.

Being a right-of-way 20 feet wide, extending 10 feet on each side of the center line of the present ditch except as otherwise indicated.

Beginning at the Southwesterly end of this center line, on the boundary between Paalaa-Uka and Kaheeka, the true azimuth and distance from the end of Course 28 of Boundary Certificate No. 101 being $123^{\circ} 41'$ 2100 feet more or less, and running:

1. Easterly 2100 feet more or less crossing Road 2-E and continuing to the end of Helemano Upper Ditch;
2. Northerly 700 feet more or less;
3. Northwesterly 1400 feet more or less, 10 feet more or less Easterly from Government Survey Triangulation Station "O'Reilly";
4. Northeasterly 1200 feet more or less;
5. Southwesterly 650 feet more or less to the intake of Helemano 54" siphon;
6. Northeasterly 1150 feet more or less to the outlet of Helemano 54" Siphon, the right-of-way being 40 feet wide;
7. Northwesterly 1400 feet more or less;
8. Northeasterly 1900 feet more or less;
9. Southeasterly 220 feet more or less;
10. Easterly 200 feet more or less along a flume across Helemano 11 Reservoir;

11. Northerly 260 feet more or less;
12. Northwesterly 340 feet more or less to Opaaula 11
Camp;
13. Northeasterly 330 feet more or less to the middle of
Opaaula Stream, the right-of-
way being 40 feet wide, the
total distance along the center
line being 12,900 feet more or
less, including the Helemano
54" Siphon and a portion of
the Opaaula 54" Siphon;

Containing an area of 6.6 acres
more or less.

Eliza R. P. Christian likewise to release all interest she may have in the flume replacements across gulch at Helemano 6 Reservoir. [739]

HELEMANO UPPER DITCH.

Initial Point in Block 17.

Being a right-of-way 20 feet wide, extending 10 feet on each side of the center line of the present ditch.

Beginning at the Northeasterly end of this center line at the intake in Helemano Stream, 8100 feet more or less Easterly from Old Muto Camp, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Halemano" being 160 feet North and 17,100 feet East, and running:

1. Westerly 2800 feet more or less;
 2. Southwesterly 6000 feet more or less;
 3. Southwesterly 1000 feet more or less;
 4. Westerly 1800 feet more or less to Helemano Upper Reservoir Inlet Ditch;
 5. Northwesterly 2600 feet more or less;
 6. Westerly 1950 feet more or less to Road 3;
 7. Northwesterly 3200 feet more or less, 200 feet more or less Northerly from Government Survey Triangulation Station "Halemano";
 8. Northwesterly 3900 feet more or less to the end of Helemano Upper Reservoir Outlet Ditch;
 9. Northwesterly 2400 feet more or less to Helemano 12 Reservoir Inlet Ditch;
 10. Northwesterly 1500 feet more or less to Road 2-K;
 11. Northwesterly 2500 feet more or less to Wahiawa Ditch Extension, 1500 feet more or less Northeasterly from Brodie 4 Camp, the total distance along the center line being 30,960 feet more or less;
- Containing an area of 14.2 acres more or less.

HELEMANO UPPER DITCH.

(Poamoho Branch.)

Initial Point in Block 23.

Being a right-of-way 20 feet wide, extending 10 feet on each side of the center line of the present ditch.

Beginning at the Easterly end of this center line at the intake in Poamoho Stream, 4400 feet more or less Southeasterly from Helemano Camp, the coordinates of said point of [740] beginning referred

to Government Survey Triangulation Station "Halemano" being 3,600 feet South and 13,800 feet East, and running:

1. Northwesterly 470 feet more or less;
2. Southwesterly 1600 feet more or less;
3. Westerly 1900 feet more or less;
4. Northwesterly 1750 feet more or less to Tunnel 13 of Helemanō Branch Ditch, 150 feet more or less Southerly from Helemanō Camp, the total distance along the center line being 6,130 feet more or less;

Containing an area of 2.8 acres more or less.

HELEMANO UPPER RESERVOIR OUTLET DITCH.

Initial Point in Block 21.

Being a right-of-way 20 feet wide, extending 10 feet on each side of the center line of the present ditch.

Beginning at the Easterly end of this center line at the toe of dam, on the Southwesterly side of Helemanō Upper Reservoir, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Halemano" being 4,450 feet South and 3,550 feet East, and running:

- | | |
|------------------|--|
| 1. Southwesterly | 2700 feet more or less to Road 3; |
| 2. Northwesterly | 2100 feet more or less to Road 4; |
| 3. Northwesterly | 6500 feet more or less to the Southerly
side of Helemano Upper Ditch,
3900 feet more or less North-
westerly from Government
Survey Triangulation Station
"Halemano" the total distance
along the center line being
12,540 feet more or less; |
- Containing an area of 5.8 acres
more or less.

Eliza R. P. Christian likewise to release all interest she may have in all the improvements thereon located. [741]

**SCHEDULE 2—OTHER WATERWAYS.
HELEMANO UPPER RESERVOIR
INLET DITCH.**

Initial Point in Block 22.

Being a right-of-way 20 feet wide, extending 10 feet on each side of the center line of the present ditch.

Beginning at the Northerly end of this center line, on the Southerly side of Helemano Upper Ditch 2,300 feet more or less Southwesterly from Helemano Camp, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Halemano" being 3,450 feet South and 6,400 feet East, and running:

1. Southerly 300 feet more or less to the 990 foot contour line along the Northernly side of Helemano Upper Reservoir, the total distance along the center line being 330 feet more or less;

Containing an area of 0.2 acre more or less.

Eliza R. P. Christian likewise to release all interest she may have in all the improvements thereon located.

HELEMANO 3 RESERVOIR OUTLET DITCH.

Initial Point in Block 1.

Being a right-of-way 20 feet wide, extending 10 feet on each side of the center line of the present ditch.

Beginning at the Northwesternly end of this center line, on the boundary between Paalaa-Uka and Paalaa-Kai, the true azimuth and distance from the end of Course 8 of Boundary Certificate No. 101 being $210^{\circ} 45'$ 130 feet more or less, and running:

1. Southeasterly 360 feet more or less to toe of dam on the Westerly side of Helemano 3 Reservoir, the total distance along the center line being 360 feet more or less;

Containing an area of 0.2 acre more or less.

[742]

HELEMANO 4-A RESERVOIR OUTLET DITCH NORTH BRANCH.

Initial Point in Block 6.

Being a right-of-way 20 feet wide, extending 10 feet on each side of the center line of the present ditch.

Beginning at the Southerly end of this center line at toe of dam, on the Westerly side of Helemano 4-A Reservoir, being also the initial point of Helemano 4-A Reservoir Outlet Ditch South Branch, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Halemano" being 9,800 feet North and 17,800 feet West, and running:

1. Northerly 700 feet more or less to the Southerly side of Road 2, the total distance along the center line being 700 feet more or less;
Containing an area of 0.3 acre more or less.

Eliza R. P. Christian likewise to release all interests she may have in all the improvements thereon located.

HELEMANO 4-A RESERVOIR OUTLET DITCH SOUTH BRANCH.

Initial Point in Block 6.

Being a right-of-way 20 feet wide, extending 10 feet on each side of the center line of the present ditch.

Beginning at the Northeasterly end of this center line at toe of dam, on the Westerly side of

Helemano 4-A Reservoir, being also the initial point of Helemano 4-A Reservoir Outlet Ditch North Branch, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Halemano" being 9,800 feet North and 17,800 feet West, and running:

1. Southwesterly 490 feet more or less to the boundary between Paalaa-Uka and Paukauila, the true azimuth and distance from the end of Course 30 of Boundary Certificate No. 101 being 11° 11' 850 feet more or less, the total distance along the center line being 490 feet more or less;

Containing an area of 0.2 acre more or less.

Eliza R. P. Christian likewise to release all interest she may have in all the improvements thereon located. [743]

HELEMANO 6 RESERVOIR INLET DITCH. Initial Point in Block 13.

Being a right-of-way 20 feet wide, extending 10 feet on each side of the center line of the present ditch.

Beginning at the Easterly end of this center line, on the Southwesterly side of Helemano 6 Reservoir, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Halemano" being 4,750 feet North and 8,700 feet West, and running:

1. Westerly

190 feet more or less to Wahiawa Ditch Extension, the total distance along the center line being 190 feet more or less;

Containing an area of 0.1 acre more or less.

HELEMANO 6 RESERVOIR OUTLET DITCH.

Initial Point in Block 13.

Being a right-of-way 20 feet wide, extending 10 feet on each side of the center line of the present ditch.

Beginning at the Southerly end of this center line at toe of dam, on the Westerly side of Helemano 6 Reservoir, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Halemano" being 5,050 feet North and 8,900 feet West, and running:

1. Northwesterly

2150 feet more or less;

2. Northeasterly

1150 feet more or less to Road 2;

3. Northwesterly

1300 feet more or less across Road 2 and Road 2-F, the total distance along the center line being 4,980 feet more or less;

Containing an area of 2.3 acres more or less.

[744]

HELEMANO 6-B RESERVOIR OUTLET DITCH NORTH BRANCH.

Initial Point in Block 6.

Being a right-of-way 20 feet wide, extending 10 feet on each side of the center line of the present ditch.

Beginning at the Southwesterly end of this center line at toe of dam, on the Northerly side of Helemano 6-B Reservoir, being also the initial point of Helemano 6-B Reservoir Outlet Ditch South Branch, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Halemano" being 9,160 feet North and 14,450 feet West, and running:

1. Northeasterly 900 feet more or less, the total distance along the center line being 950 feet more or less;
Containing an area of 0.4 acre more or less.

Eliza R. P. Christian likewise to release all interest she may have in all the improvements thereon located.

HELEMANO 6-B RESERVOIR OUTLET DITCH SOUTH BRANCH.

Initial Point in Block 6.

Being a right-of-way 20 feet wide, extending 10 feet on each side of the center line of the present ditch.

Beginning at the Northeasterly end of this center line at toe of dam, on the Northerly side of Helemano 6-B Reservoir, being also the initial point of Helemano 6-B Reservoir Outlet Ditch North Branch, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Halemano" being 9,160 feet North and 14,450 feet West, and running:

1. Southwesterly 1200 feet more or less to Track I;
 2. Southeasterly 850 feet more or less to 1000 feet more or less Southwesterly from Helemano 6-B Reservoir, the total distance along the center line being 2,160 feet more or less;
- Containing an area of 1.0 acre more or less.

Eliza R. P. Christian likewise to release all interest she may have in all the improvements thereon located. [745]

HELEMANO 12 RESERVOIR INLET DITCH. Initial Point in Block 14.

Being a right-of-way 20 feet wide, extending 10 feet on each side of the center line of the present ditch.

Beginning at the Southerly end of this center line, on the Northerly side of Helemano Upper Ditch, 1,000 feet Southeasterly from Helemano 12 Camp, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Halemano" being 2,550 feet North and 5,770 feet West, and running

1. Northerly 150 feet more or less to the Easterly side of Helemano 12 Reservoir, the total distance along the center line being 150 feet more or less;
- Containing an area of 0.1 acre more or less.

Eliza R. P. Christian likewise to release all interest she may have in all the improvements thereon located.

HELEMANO 12 RESERVOIR OUTLET DITCH.

Initial Point in Block 13.

Being a right-of-way 20 feet wide, extending 10 feet on each side of the center line of the present ditch.

Beginning at the Southeasterly end of this center line at toe of dam, on the Northwesterly side of Helemano 12 Reservoir, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Halemano" being 3,150 feet North and 6,700 feet West, and running:

1. Northwesterly 2280 feet more or less to the Southerly side of Helemano 6 Reservoir, the total distance along the center line being 2,280 feet more or less;

Containing an area of 1.0 acre more or less.

Eliza R. P. Christian likewise to release all interest she may have in all the improvements thereon located. [746]

HELEMANO 15 RESERVOIR INLET DITCH.

Initial Point in Block 19.

Being a right-of-way 20 feet wide, extending 10 feet on each side of the center line of the present ditch.

Beginning at the Southwesterly end of this center line, on the boundary between Paalaa-Uka and Kaheeka, the true azimuth and distance from the end of Course 28 of Boundary Certificate No. 101

being $331^{\circ} 30' 30''$ 3,800 feet more or less, and running:

1. Northeasterly 2300 feet more or less;
 2. Easterly 2100 feet to the Southerly side of Helemano Upper Ditch, 2650 feet more or less Southeasterly from Helemano 12 Camp, the total distance along the center line being 5,340 feet more or less;
- Containing an area of 2.5 acres more or less.

Eliza R. P. Christian likewise to release all interest she may have in all the improvements thereon located. [747]

HELEMANO 11 RESERVOIR OUTLET DITCH. Initial Point in Block 7.

Being a right-of-way 20 feet wide, extending 10 feet on each side of the center line of the present ditch.

Beginning at the Southeasterly end of this center line at toe of dam, on the Northwestern side of Helemano 11 Reservoir, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Halemano" being 10,750 feet North and 6,650 feet West, and running:

1. Westerly 800 feet more or less;
 2. Northwesterly 900 feet more or less;
 3. Northerly 600 feet more or less to the Southerly side of Road 1, the total distance along the center line being 2,400 feet more or less;
- Containing an area of 1.1 acres more or less.

Eliza R. P. Christian likewise to release all interest she may have in all the improvements thereon located.

KEMOO DITCH EXTENSION.

Initial Point in Block 6.

Being a right-of-way 20 feet wide, extending 10 feet on each side of the center line of the present ditch.

Beginning at the Southwesterly end of this center line, on the boundary between Paalaa-Uka and Paukauila, the true azimuth and distance from the end of Course 30 of Boundary Certificate No. 101 being $113^{\circ} 11' 250$ feet more or less, and running:

1. Northerly 1150 feet more or less along the Westerly side of Road 2-B to Road 2;
2. Northeasterly 1850 feet across Road 2,390 feet more or less from the Westerly side of Helemano 6 Siphon (new), the total distance along the center line being 3,420 feet more or less;

Containing an area of 1.6 acres more or less.

Eliza R. P. Christian likewise to release all interest she may have in all the improvements thereon located. [748]

PUMP 10 HIGH LIFT DITCH.

Initial Point in Block 6.

Being a right-of-way 20 feet wide, extending 10 feet on each side of the center line of the present ditch.

Beginning at the Southerly end of this center line, on the boundary between Paalaa-Uka and Kaheeka, the true azimuth and distance from the end of Course 30 of Boundary Certificate No. 101 being $321^{\circ} 45' 400$ feet more or less, and running:

1. Northerly 1350 feet more or less and crossing Track I to Road 2;
2. Northeasterly 1600 feet more or less and crossing Road 2;
3. Northerly 800 feet more or less to the beginning of Helemano 6 Siphon (new);
4. Northeasterly 1300 feet more or less;
5. Northwesterly 50 feet more or less to the Southeast-
erly side of Helemano 9-C Res-
ervoir, the total distance along
the center line being 5,640 feet
more or less;

Containing an area of 2.6 acres
more or less.

Eliza R. P. Christian likewise to release all interest she may have in all the improvements thereon located.

PUMP 10 LOW LIFT DITCH.

Initial Point in Block 5.

Being a right-of-way 20 feet wide, extending 10 feet on each side of the center line of the present ditch.

Beginning at the Southwesterly end of this center line, on the boundary between Paalaa-Uka and Paukaūila, the true azimuth and distance from the end of Course 31 of Boundary Certificate No. 101 being $122^{\circ} 43' 100$ feet more or less, and running:

1. Northeasterly 1440 feet more or less to the South-
westerly side of Road 2. the
total distance along the center
line being 1,440 feet more or
less;
Containing an area of 0.7 acre
more or less.

Eliza R. P. Christian likewise to release all interest
she may have in all the improvements thereon
located. [749]

SCHEDULE 3—SIPHONS.

HELEMANO 54"

(This description covered by that of the Wahiawa
Ditch Extension.—Eliza R. P. Christian likewise to
release all interest she may have in the concrete
piers and blow-off valve installed since 1910.)

OPAEULA 54"

(This description covered by that of the Wahiawa
Ditch Extension.)

HELEMANO 6 (NEW).

(This description covered by that of Pump 10
High Lift Ditch.—Eliza R. P. Christian likewise to
release all interest she may have in all the im-
provements thereon located.)

HELEMANO 11 RESERVOIR.

(This description covered by that of Helemano
9-C Reservoir.—Eliza R. P. Christian likewise to

release all interest she may have in all the improvements thereon located.) [750]

**SCHEDULE 4—DOMESTIC WATER SYSTEM.
DOMESTIC WATER LINE 9.**

Initial Point in Block 13.

Being a right-of-way 5 feet wide, extending 25 feet on each side of the center line of the present pipe line.

Beginning at the Easterly end of this center line, on the Westerly side of Helemano 12 Camp, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Halemano" being 3,350 feet North and 6,600 feet West, and running:

1. Southwesterly 900 feet more or less to the middle of Domestic Water Line 6 on the Southerly side of Road 2-K;
 2. Northwesterly 2700 feet more or less to the Southerly side of Wahiawa Ditch Extension;
 3. Westerly 1700 feet more or less to Helemano 9 Camp, the total distance along the center line being 5,520 feet more or less;
- Containing an area of 0.7 acre more or less.

Eliza R. P. Christian likewise to release all interest she may have in all the improvements thereon located.

DOMESTIC WATER LINE 10.

Initial Point in Block 3.

Being a right-of-way 5 feet wide, extending 2.5 feet on each side of the center line of the present pipe line.

Beginning at the Southeasterly end of this center line on the Easterly side of Opaaula 10 Camp, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Halemano" being 12,300 feet North and 11,450 feet West, and running:

1. Northwesterly 1850 feet more or less;
2. Northwesterly 300 feet more or less to the middle of Opaaula Stream, the total distance along the center line being 2,150 feet more or less;

Containing an area of 0.2 acre more or less.

Eliza R. P. Christian likewise to release all interest she may have in all the improvements thereon located. [751]

DOMESTIC WATER LINE 11.

Initial Point in Block 6.

Being a right-of-way 5 feet wide, extending 2.5 feet on each side of the center line of the present pipe line.

Beginning at the Southerly end of this center line at the tanks on the Southeasterly side of Track I, 500 feet more or less Northeasterly from Helemano 4-A Reservoir, the coordinates of said point of

beginning referred to Government Survey Triangulation Station "Halemano" being 10,000 feet North and 17,150 feet West, and running:

1. Northwesterly 650 feet more or less;
 2. Northeasterly 4300 feet more or less to the middle of Opaecula Stream, the total distance along the center line being 4,950 feet more or less;
- Containing an area of 0.6 acre more or less.

Eliza R. P. Christian likewise to release all interest she may have in all the improvements thereon located.

DOMESTIC WATER LINE 12.

Initial Point in Block 6.

Being a right-of-way 5 feet wide, extending 25 feet on each side of the center line of the present pipe line.

Beginning at the Northwesterly end of this center line at the tanks on the Southeasterly side of Track I, 500 feet more or less Northeasterly from Halemano 4-A Reservoir, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Halemano" being 10,000 feet North and 17,150 feet West, and running:

1. Northeasterly 250 feet more or less along the Southeasterly side of Track I;
2. Southeasterly 2900 feet more or less along the Southwesterly side of Road 2;

3. Northeasterly 100 feet more or less to Helemano 6 Camp, the total distance along the center line being 3,250 feet more or less;
Containing an area of 0.4 acre more or less.

Eliza R. P. Christian likewise to release all interest she may have in all the improvements thereon located. [752]

DOMESTIC WATER LINE 13.

Initial Point in Block 6.

Being a right-of-way 5 feet wide, extending 2.5 feet on each side of the center line of the present pipe line.

Beginning at the Southeasterly end of this center line at the tanks on the Southeasterly side of Track I, 500 feet more or less Northeasterly from Helemano 4-A Reservoir, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Halemano" being 10,000 feet North and 17,150 feet West, and running:

1. Northwesterly 650 feet more or less to the Southerly side of Road 2;
2. Northwesterly 4800 feet more or less along the Southwesterly side of Road 2;
3. Northerly 100 feet more or less to Helemano 1 Camp, the total distance along the center line being 5,550 feet more or less;
Containing an area of 0.6 acre more or less.

Eliza R. P. Christian likewise to release all interest she may have in all the improvements thereon located.

DOMESTIC WATER LINE 14.**Initial Point in Block 6.**

Being a right-of-way 5 feet wide, extending 2.5 feet on each side of the center line of the present pipe line.

Beginning at the Northeasterly end of this center line at the tanks on the Southeasterly side of Track I, 500 feet more or less Northeasterly from Helemano 4-A Reservoir, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Halemano" being 10,000 feet North and 17,150 feet West, and running:

1. Southwesterly 850 feet more or less along the Easterly side of Track I to the boundary between Paalaa-Uka and Paukauila, the true azimuth and distance from the end of Course 30 of Boundary Certificate No. 101 being $113^{\circ} 11'$ 170 feet more or less, the total distance along the center line being 850 feet more or less;

Containing an area of 0.1 acre more or less.

Eliza R. P. Christian likewise to release all interest she may have in all the improvements thereon located. [753]

DOMESTIC WATER LINE 15.**Initial Point in Block 5.**

Being a right-of-way 5 feet wide, extending 2.5 feet on each side of the center line of the present pipe line.

Beginning at the Westerly end of this center line at Helemano 4 Camp, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Halemano" being 11,050 feet North and 20,500 feet West, and running:

1. Easterly 1550 feet more or less to the center line of Domestic Water Line 13 on the Southerly side of Track F, the total distance along the center line being 1,550 feet more or less;

Containing an area of 0.2 acre more or less.

Eliza R. P. Christian likewise to release all interest she may have in all the improvements thereon located.

LOCOMOTIVE WATER LINE.

Initial Point in Block 5.

Being a right-of-way 5 feet wide, extending 2.5 feet on each side of the center line of the present pipe line.

Beginning at the Northeasterly end of this center line at the center line of Domestic Water Line 13, 100 feet more or less Southerly from Helemano 3 Camp, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Halemano" being 10,580 feet North and 18,240 feet West, and running:

1. Southwesterly 550 feet more or less to the Northerly side of Track H, the total distance along the center line being 550 feet more or less;
Containing an area of 0.1 acre more or less.

Eliza R. P. Christian likewise to release all interest she may have in all the improvements thereon located. [754]

SCHEDULE 5—FLUMES.

HELEMANO UPPER DITCH, POAMOHO BRANCH.

(This description covered by that of the Helemano Upper Ditch, Poamoho Branch.—Eliza R. P. Christian likewise to release all interest she may have in the Armco flumes built about 1925.)

HELEMANO UPPER DITCH.

(This description covered by that of the Helemano Upper Ditch.)

WAHIAWA DITCH EXTENSION.

(This description covered by that of the Wahiawa Ditch Extension.—Eliza R. P. Christian likewise to release all interest she may have in flumes built across the gulch at Helemano 6 Reservoir, built in 1931.)

HELEMANO RESERVOIR 6 OUTLET DITCH.

(This description covered by that of Helemano Reservoir 6 Outlet Ditch.—Eliza R. P. Christian

likewise to release all interest she may have in all improvements thereon located, including flumes.)

[755]

HELEMANO UPPER RESERVOIR OUTLET DITCH.

(This description covered by that of Helemano Upper Reservoir Outlet Ditch.—Eliza R. P. Christian likewise to release all interest she may have in all the improvements thereon located, including flumes.)

HELEMANO 11 RESERVOIR OUTLET DITCH.

(This description covered by that of Helemano 11 Reservoir Outlet Ditch.—Eliza R. P. Christian likewise to release all interest she may have in all the improvements thereon located, including flumes.)

[756]

SCHEDULE 6—PIPE LINES.

PUMP 10 LOW LIFT 24" PINE LINE.

Initial Point in Block 5.

Being a right-of-way 20 feet wide, extending 10 feet on each side of the center line of the present pipe line.

Beginning at the Southwesterly end of this center line at Pump 10, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Halemano" being 7,650 feet North and 21,670 feet West, and running:

1. Northeasterly 200 feet more or less to the North-easterly side of Grant 235, Apana 2 to Jerome Topliff and Lewis Johnson, the total distance along the center line being 200 feet more or less;
Containing an area of 0.1 acre more or less.

Eliza R. P. Christian likewise to release all interest she may have in all the improvements thereon located.

PUMP 10 HIGH LIFT 30" PIPE LINE.

Initial Point in Block 5.

Being a right-of-way 20 feet wide, extending 10 feet on each side of the center line of the present pipe line.

Beginning at Pump 10 at the Northwesterly end of this center line, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Halemano" being 7,600 feet North and 21,610 feet West, and running:

1. Southeasterly 270 feet more or less to the Southwesterly boundary of Grant 235, Apana 2 to Jerome Topliff and Lewis Johnson, the total distance along the center line being 270 feet more or less;
Containing an area of 0.1 acre more or less.

Eliza R. P. Christian likewise to release all interest she may have in all the improvements thereon located. [757]

WATER LINE FROM PUMP 8.

Initial Point in Block 1.

Being a right-of-way 20 feet wide, extending 10 feet on each side of the center line of the present pipe line.

Beginning at the end of Course 9 of Boundary Certificate No. 101, and running:

1. Southeasterly 450 feet more or less to toe of dam on the Northwest corner of Helemano 3 Reservoir, the total distance along the center line being 450 feet more or less;

Containing an area of 0.2 acre more or less.

Eliza R. P. Christian likewise to release all interest she may have in all the improvements thereon located. [758]

SCHEDULE 7—RAILROADS.

RAILROAD—TRACK A.

Initial Point in Block 1.

Being a right-of-way 40 feet wide, extending 20 feet on each side of the center line of the present railroad track.

Beginning at the Southwesterly end of the center line of this track on the boundary between Paalaa-Uka and Paukauila, the true azimuth and distance from a pipe in concrete at the initial point of Boundary Certificate No. 101 being $302^{\circ} 43' 11.5$ feet, and running:

1. Northeasterly 1150 feet more or less;
2. Northeasterly and Easterly 900 feet more or less on a curve to the right; Thence
3. Easterly 800 feet more or less; Thence
4. Northeasterly and Northerly 650 feet more or less along a curve to the left to the boundary between Paalaa-Uka and Paalaa-Kai, the true azimuth and distance from the end of Course 7 of Boundary Certificate No. 101 being $55^{\circ} 15' 35.67$ feet, the total distance along the center line being 3,600 feet more or less;
Containing an area of 3.3 acres more or less.

Eliza R. P. Christian likewise to release all interest she may have in all the improvements located thereon except in 1200 feet of grading completed prior to May 2, 1910.

RAILROAD—TRACK B.

Initial Point in Block 1.

Being a right-of-way 40 feet wide, extending 20 feet on each side of the center line of the present railroad track.

Beginning at the Northwesterly end of the center line of this track on the boundary between Paalaa-Uka and Paalaa-Kai, [759] the true azimuth and distance from the end of Course 8 of Boundary Certificate No. 101 being $30^{\circ} 45' 23.75$ feet, and running:

1. Southeasterly 675 feet more or less; Thence
 2. Southeasterly 310 feet more or less along a curve to the right;
 3. Southerly 300 feet more or less, the total distance along the center line being 1,300 feet more or less;
- Containing an area of 0.9 acre more or less.

Eliza R. P. Christian likewise to release all interest she may have in all the improvements located thereon.

RAILROAD—TRACK C.

Initial Point in Block 1.

Being a right-of-way 40 feet wide, extending 20 feet on each side of the center line of the present railroad track.

Beginning at the Northeasterly end of the center line of this track, the true azimuth and distance from the end of Course 12 of Boundary Certificate No. 101 being $359^{\circ} 16' 317.0$ feet, and running:

1. Southwesterly 1390 feet more or less; Thence
 2. Southerly 350 feet more or less along a curve to the left to the center line of Track B, the total distance along the center line being 1,800 feet more or less;
- Containing an area of 1.3 acres more or less.

Eliza R. P. Christian likewise to release all interest she may have in all the improvements thereon located.

RAILROAD—TRACK D.

Initial Point in Block 1.

Being a right-of-way 40 feet wide, extending 20 feet on each side of the center line of the present railroad track.

Beginning at the Westerly end of the center line of this track, the true azimuth and distance from the end of Course 12 of Boundary Certificate No. 101 being $359^{\circ} 16' 317$ [760] feet more or less, and running:

1. Northeasterly, Easterly and Southerly 750 feet more or less along a curve to the right;
2. Southerly 350 feet more or less; Thence
3. Southeasterly 320 feet more or less on a curve to the left;
4. Southeasterly 310 feet more or less; Thence
5. Southeasterly and Northeasterly 700 feet more or less on a curve to the left;
6. Northeasterly 340 feet more or less; Thence
7. Northeasterly and Easterly 500 feet more or less along a curve to the right; Thence
8. Southeasterly 3200 feet more or less along tangents and curves to the Northwest-
erly end of Road 1-G, the total
distance along the center line
being 7,200 feet more or less;
Containing a gross area of
6.6 acres more or less and a
net area of 6.3 acres more or
less after deducting that por-
tion of the right-of-way
through R. P. 2841, L. C. Aw.
3868, Apana 1 to Pila.

Eliza R. P. Christian likewise to release all interest she may have in all the improvements located thereon.

RAILROAD—TRACK E.**Initial Point in Block 1.**

Being a right-of-way 40 feet wide, extending 20 feet on each side of the center line of the present railroad track.

Beginning at the Westerly end of the center line of this track on the boundary between Paalaa-Uka and Paukauila, the true azimuth and distance from the initial point of Boundary Certificate No. 101 being $302^{\circ} 43' 159.18$ feet, and running: [761]

1. Easterly 2300 feet more or less;
 2. Southeasterly 500 feet more or less along a curve to the right; Thence
 3. Southerly 1700 feet more or less along tangents and curves to the boundary between Paalaa-Uka and Paukauila, the true azimuth and distance from the end of Course 31 of Boundary Certificate No. 101 being $293^{\circ} 11' 150$ feet more or less, the total distance along the center line being 4,680 feet more or less;
- Containing an area of 4.3 acres more or less.

Eliza R. P. Christian likewise to release all interest she mave have in all the improvements thereon located, except in the grading.

RAILROAD—TRACK F.**Initial Point in Block 5.**

Being a right-of-way 40 feet wide, extending 20 feet on each side of the center line of the present railroad track.

Beginning at the Northwesterly end of the center line of this track, on the center line of Track E near Pump 10 Low Lift Ditch, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Halemano" being 11,410 feet North and 20,310 feet West, and running:

1. Southeasterly and Easterly 500 feet more or less along a curve to the left;
2. Easterly 1050 feet more or less, the total distance along the center line being 1,700 feet more or less;
Containing an area of 1.6 acres more or less.

Eliza R. P. Christian likewise to release all interest she may have in all the improvements thereon, located, except in the grading. [762]

RAILROAD—TRACK G.

Initial Point in Block 5.

Being a right-of-way 40 feet wide, extending 20 feet on each side of the center line of the present railroad track.

Beginning at the Southerly end of the center line of this track, on the boundary between Paalaa-Uka and Paukauila, the true azimuth and distance from the end of Course 31 of Boundary Certificate No. 101 being $293^{\circ} 11'$ 500 feet more or less, and running:

1. Northerly 950 feet more or less to the Easterly side of Track E, the total distance along the center line being 950 feet more or less;
Containing an area of 0.9 acre more or less.

Eliza R. P. Christian likewise to release all interest she may have in all the improvements located thereon.

RAILROAD—TRACK H.

Initial Point in Block 5

Being a right-of-way 40 feet wide, extending 20 feet on each side of the center line of the present railroad track.

Beginning at the Southwesterly end of the center line of this track on the boundary between Paalaa-Uka and Paukauila, the true azimuth and distance from the end of Course 31 of Boundary Certificate No. 101 being $293^{\circ} 11'$ 1750 feet more or less, and running:

1. Northeasterly and Southeasterly 1500 feet more or less along a curve to the right to the boundary between Paalaa-Uka and Paukauila, the true azimuth and distance from the end of Course 30 of Boundary Certificate No. 101 being $113^{\circ} 11'$ 880 feet more or less, the total distance along the center line being 1500 feet more or less; Containing an area of 1.4 acres more or less.

Eliza R. P. Christian likewise to release all interest she may have in all the improvements located thereon. [763]

RAILROAD—TRACK I.

Initial Point in Block 6.

Being a right-of-way 40 feet wide, extending 20 feet on each side of the center line of the present railroad track.

Beginning at the Westerly end of the center line of this track on the boundary between Paalaa-Uka and Paukauila, the true azimuth and distance from the end of Course 30 of Boundary Certificate No. 101 being $113^{\circ} 11' 210$ feet more or less, and running:

1. Northeasterly 1170 feet more or less;
2. Easterly 1370 feet more or less;
3. Southerly 1550 feet more or less;
4. Easterly 2350 feet more or less;
5. Southeasterly 1150 feet more or less;
6. Easterly 2100 feet more or less;
7. Southerly 1200 feet more or less;
8. Easterly 1300 feet more or less to a point $308^{\circ} 20'$ 1050 feet more or less from Government Survey Triangulation Station "O'Reilly," the total distance along the center line being 13,680 feet more or less;

Containing an area of 12.6 acres more or less.

Eliza R. P. Christian likewise to release all interest she may have in all the improvements located thereon, except in 7600 feet of grading completed prior to May 2, 1910.

RAILROAD—TRACK J.

Initial Point in Block 6.

Being a right-of-way 40 feet wide, extending 20 feet on each side of the center line of the present railroad track.

Beginning at the Northwestern end of the center line of this track on the Southwesterly side of Track I, 1500 feet more or less Southeasterly from Helemano 6 Camp, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Halemano" being 8,150 feet North and 12,600 feet West, and running:

1. Southeasterly 270 feet more or less, the total distance along the center line being 270 feet more or less;
Containing an area of 0.2 acre more or less.

Eliza R. P. Christian likewise to release all interest she may have in all the improvements located thereon, except in the grading: [764]

RAILROAD—TRACK K.

Initial Point in Block 13.

Being a right-of-way 40 feet wide, extending 20 feet on each side of the center line of the present railroad track.

Beginning at the Northwestern end of the center line of this track on the center line of Track I, 200 feet more or less Westerly from the end of Track I, the coordinates of said point of beginning referred to Government Survey Triangulation Station

"Halemano" being 5,920 feet North and 9,100 feet West, and running:

1. Southerly 700 feet more or less to the top of Halemano 6 Reservoir Dam, the total distance along the center line being 700 feet more or less;

Containing an area of 0.6 acre more or less.

Eliza R. P. Christian likewise to release all interest she may have in all the improvements located thereon.

RAILROAD—TRACK L.

Initial Point in Block 5.

Being a right-of-way 40 feet wide, extending 20 feet on each side of the center line of the present railroad track.

Beginning at the Northwesterly end of this center line, on the Westerly side of Grant 238 to John F. Anderson and Franklin Davis, 80 feet more or less Northerly from the West corner (marked 8 on map) of Grant 238 to John F. Anderson and Franklin Davis, and running:

1. Southeasterly 600 feet more or less;
2. Easterly 650 feet more or less along a curve to the left to the Northeasterly boundary of Grant 238 to John F. Anderson and Franklin Davis, 250 feet more or less Southeasterly from the Northeast corner (marked 2 on map) of Franklin Davis, the

total distance along the center line being 1,260 feet more or less;

Containing an area of 1.2 acres more or less.

Eliza R. P. Christian likewise to release all interest she may have in all the improvements located thereon, except in the grading. [765]

RAILROAD—TRACK M.

Initial Point in Block 5.

Being a right-of-way 40 feet wide, extending 20 feet on each side of the center line of the present railroad track.

Beginning at the Southeasterly end of this center line, on the Northeasterly boundary of Grant 235, Apana 2 to Jerome Topliff and Lewis Johnson, 50 feet more or less Northwesterly from the Northeast corner (marked 3 on map) of Grant 235, Apana 2 to Jerome Topliff and Lewis Johnson, and running:

1. Northwesterly 170 feet more or less;

2. Northwesterly and

Northerly

530 feet more or less along a curve to the right to the center line of Track L, the total distance along the center line being 750 feet more or less;

Containing an area of 0.7 acre more or less.

Eliza R. P. Christian likewise to release all interest she may have in all the improvements located thereon, except in the grading.

PORTABLE TRACK BED.**Initial Point in Block 6.**

Being a right-of-way 40 feet wide, extending 20 feet on each side of the present center line.

Beginning at the Westerly end of this center line, on the Northerly side of Road 2-D, 1400 feet more or less Southwesterly from Helemano 6 Camp, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Halemano" being 7,850 feet North and 15,350 feet West, and running:

1. Easterly 1100 feet more or less;
2. Southerly 250 feet more or less on a curve to the right;
3. Northwesterly 400 feet more or less, the total distance along the center line being 1,850 feet more or less;

Containing an area of 1.7 acres more or less.

Eliza R. P. Christian likewise to release all interest she may have in all the improvements located thereon. [766]

SCHEDULE 8—ROADS.**ROADS 1.****Initial Point in Block 1.**

Being a right-of-way 30 feet wide, extending 15 feet on each side of the center line of the present road.

Beginning at the Westerly end of this center line, on the Southeasterly side of the Kamehameha Highway, the true azimuth and distance from the end of

Course 1 of Boundary Certificate No. 101 being $21^{\circ} 00' 30$ feet more or less, and running:

1. Easterly 1350 feet more or less;
2. Southeasterly 800 feet more or less;
3. Northeasterly 1650 feet more or less;
4. Southeasterly 3600 feet more or less to Opauala 9 Camp; Thence
5. Northeasterly 250 feet more or less to the Westerly side of Opauala 9 Camp;
6. Southeasterly 350 feet more or less; Thence
7. Easterly 4700 feet more or less to Opauala 10 Camp;
8. Easterly 3800 feet more or less;
9. Southeasterly 1500 feet more or less to Opauala 11 Camp;
10. Southeasterly 15300 feet more or less to the Northerly end of Road 1-L;
11. Northeasterly 3900 feet more or less;
12. Southeasterly 5300 feet more or less to a point near the Bryant House, the total distance along the center line being 44,000 feet more or less;
Containing an area of 30.3 acres more or less.

ROAD 1-A.

Initial Point in Block 1.

Being a right-of-way 30 feet wide, extending 15 feet on each side of the center line of the present road.

Beginning at the Westerly end of this center line, the true azimuth and distance from the end of Course 8 of Boundary Certificate No. 101 being $210^{\circ} 45' 230$ feet more or less, and running:

1. Southeasterly 600 feet more or less to Road 1, the total distance along the center line being 600 feet more or less;

Containing an area of 0.4 acre more or less.

[767]

ROAD 1-B.

Initial Point in Block 1.

Being a right-of-way 30 feet wide, extending 15 feet on each side of the center line of the present road.

Beginning at the Southerly end of this center line, on the Northerly side of Road 1, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Halemano" being 14,370 feet North and 19,620 feet West; and running:

1. Northerly 1150 feet more or less;
2. Easterly 1070 feet more or less;
3. Northerly 100 feet more or less to the middle of Opaaula Stream, 200 feet more or less Southwesterly from Pump 3, the total distance along the center line being 2,200 feet more or less;

Containing an area of 1.5 acres more or less.

Eliza R. P. Christian likewise to release all the interest she may have in all improvements located thereon.

ROAD 1-C.

Initial Point in Block 2.

Being a right-of-way 30 feet wide, extending 15 feet on each side of the center line of the present road.

Beginning at the Southeasterly end of this center line, on the Northerly side of Road 1, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Halemano" being 12,500 feet North and 13,920 feet West, and running:

1. Northwesterly 850 feet more or less to the end of Track D, the total distance along the center line being 850 feet more or less;

Containing an area of 0.6 acre more or less.

[768]

ROAD 1-D.

Initial Point in Block 3.

Being a right-of-way 30 feet wide, extending 15 feet on each side of the center line of the present road.

Beginning at the Northwesterly end of this center line, on the Southerly side of Road 1 near Opaepala 10 Camp, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Halemano" being 12,170 feet North and 11,400 feet West, and running:

1. Southeasterly 1200 feet more or less;
2. Westerly 1150 feet more or less;
3. Southeasterly 4300 feet more or less to the Wahiawa Ditch Extension, 1200 feet more or less Southwesterly from the Southerly side of Helemano 11 Reservoir Dam, the total distance along the center line being 9,900 feet more or less;

Containing an area of 6.8 acres more or less.

ROAD 1-E.

Initial Point in Block 3.

Being a right-of-way 30 feet wide, extending 15 feet on each side of the center line of the present road.

Beginning at the Northerly end of this center line, on the Southerly side of Road 1, 2400 feet more or less Easterly from Opaeula 10 Camp, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Halemano" being 12,120 feet North and 9,000 feet West, and running:

1. Southerly 1320 feet more or less to the northerly side of Road 1-D, the total distance along the center line being 4,600 feet more or less;

Containing an area of 3.2 acres more or less.

ROAD 1-F.

Initial Point in Block 7.

Being a right-of-way 30 feet wide, extending 15 feet on each side of the center line of the present road.

Beginning at the Northeasterly end of this center line, on the Southerly side of Road 1 near Opaecula 11 Camp, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Halemano" being 10,900 feet North and 6,550 feet West, and running:

1. Southwesterly 1500 feet more or less to Road 1-D;
2. Southerly 1850 feet more or less to the Northeasterly end of Helemano 54" siphon, the total distance along the center line being 3,840 feet more or less;

Containing an area of 2.6 acres more or less.

ROAD 1-G.

Initial Point in Block 8.

Being a right-of-way 30 feet wide, extending 15 feet on each side of the center line of the present road.

Beginning at the Northwesterly end of this center line, 1000 feet Southeasterly from Opaecula 11 Camp, on the Southerly side of Road 1, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Halemano" being 10,450 feet North and 5,650 feet West, and running:

- | | |
|------------------|---|
| 1. Southerly | 600 feet more or less; |
| 2. Southeasterly | 6700 feet more or less to Road 1-J; |
| 3. Southeasterly | 5250 feet more or less to Road 1-K; |
| 4. Southeasterly | 1200 feet more or less to the Westerly side of Road 1-L, the total distance along the center line being 13,980 feet more or less; |
- Containing an area of 9.6 acres more or less.

[770]

ROAD 1-H.

Initial Point in Block 9.

Being a right-of-way 30 feet wide, extending 15 feet on each side of the center line of the present road.

Beginning at the northerly end of this center line, on the Southerly side of Road 1-G, 1000 feet more or less Southerly from Waialua Camp, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Halemaho" being 7,150 feet North and 1,900 feet East, and running:

- | | |
|------------------|---|
| 1. Southerly | 1250 feet more or less; |
| 2. Easterly | 700 feet more or less; |
| 3. Southerly | 550 feet more or less; |
| 4. Westerly | 1600 feet more or less; |
| 5. Southeasterly | 4400 feet more or less; |
| 6. Easterly | 2700 feet more or less; |
| 7. Southeasterly | 2100 feet more or less to the Westerly side of Road 1-L, 3000 feet more or less Northeasterly from Old Muto Camp the total distance along the center line being 13,800 feet more or less; |
- Containing an area of 9.5 acres more or less.

ROAD 1-I.

Initial Point in Block 9.

Being a right-of-way 30 feet wide, extending 15 feet on each side of the center line of the present road.

Beginning at the Southerly end of this center line, on the Northerly side of Road 1, 600 feet more or less Northeasterly from Waialua Camp, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Halemano" being 9,050 feet North and 2,450 feet East, and running:

1. Northwesterly 1400 feet more or less;
2. Easterly 1500 feet more or less;
3. Southeasterly 650 feet to the middle of Opaaula Stream, the total distance along the center line being 3,720 feet more or less;

Containing an area of 2.6 acres more or less.

[771]

ROAD 1-J.

Initial Point in Block 9.

Being a right-of-way 30 feet wide, extending 15 feet on each side of the center line of the present road.

Beginning at the Northerly end of this center line, on the Southerly side of Road 1, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Halemano" being 9,010 feet North and 2,450 feet East, and running:

- | | |
|------------------|---|
| 1. Southwesterly | 500 feet more or less; |
| 2. Southwesterly | 600 feet more or less; |
| 3. Southerly | 700 feet more or less; |
| 4. Northwesterly | 700 feet more or less; |
| 5. Southerly | 400 feet more or less to the Northerly side of Road 1-G, 1250 feet more or less Westerly from Road 1-H, the total distance along the center line being 3,000 feet more or less; |
- Containing an area of 2.1 acres more or less.

ROAD 1-K.

Initial Point in Block 9.

Being a right-of-way 30 feet wide, extending 15 feet on each side of the center line of the present road.

Beginning at the Northerly end of this center line, on the Southerly side of Road 1, 3400 feet more or less Easterly from Waialua Camp, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Halemano" being 8,250 feet North and 5,750 feet East, and running:

- | | |
|--------------|---|
| 1. Southerly | 1650 feet more or less to the Northerly side of Road 1-G, the total distance along the center line being 1,650 feet more or less; |
|--------------|---|
- Containing an area of 1.2 acres more or less.

ROAD 1-L.

Initial Point in Block 10.

Being a right-of-way 30 feet wide, extending 15 feet on each side of the center line of the present road.

Beginning at the Northerly end of this center line, on the Southerly side of Road 1, 6200 feet more or less Easterly from Waialua Camp and 800 feet more or less Southerly from the middle of Opaepa Stream, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Halemano" being 7,600 feet North and 8,400 feet East, and running:

1. Southwesterly 2400 feet more or less to Road 1-G;
 2. Southeasterly 3450 feet more or less;
 3. Southerly 800 feet more or less to Road 1-H;
 4. Easterly 1200 feet more or less;
 5. Southeasterly 400 feet more or less;
 6. Southwesterly 1200 feet more or less;
 7. Westerly 1700 feet more or less;
 8. Southwesterly 1900 feet more or less to the Northerly side of Road 2, 1800 feet more or less Northwesterly from Old Muto Camp, the total distance along the center line being 18,390 feet more or less;
- Containing an area of 12.7 acres more or less.

ROAD 2.

Initial Point in Block 1.

Being a right-of-way 30 feet wide, extending 15 feet on each side of the center line of the present road.

Beginning at the Northwestern end of this center line, on the Southeasterly side of Kamehameha Highway, the true azimuth and distance from the initial point of Boundary Certificate No. 101 being $201^{\circ} 00' 1300$ feet more or less, and running:

1. Southeasterly 1060 feet more or less to Helemano 1 Camp;
 2. Southeasterly 4050 feet more or less to Helemano 3 Camp;
 3. Southeasterly 4500 feet more or less to Helemano 6 Camp;
 4. Southeasterly 5250 feet more or less to Road 2-I and Road 2-H, the true azimuth and distance from Government Survey Triangulation Station "O'Reilly" being $228^{\circ} 50' 390$ feet more or less;
- [773]
5. Southeasterly 9000 feet more or less;
 6. Southeasterly 3300 feet more or less to Road 2-M;
 7. Easterly 2450 feet more or less to Road 3;
 8. Northeasterly 350 feet more or less;
 9. Easterly 3500 feet more or less to Road 5-A;
 10. Northeasterly 250 feet more or less to Road 1-L;
 11. Easterly 1850 feet more or less to Old Muto Camp;
 12. Southeasterly 2350 feet more or less to Road 5;
 13. Northeasterly 3000 feet more or less;
 14. Easterly 6600 feet more or less to a point 1350 feet more or less Southwesterly from the end of Course 19 of Boundary Certificate No. 101, the total distance along the center line being 29,700 feet more or less;
- Containing an area of 20.4 acres more or less.

ROAD 2-A.

Initial Point in Block 5.

Being a right-of-way 30 feet wide, extending 15 feet on each side of the center line of the present road.

Beginning at the Northerly end of this center line, on the Southerly side of Road 2, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Halemano" being 11,850 feet North and 20,250 feet West, and running:

1. Southerly

1350 feet more or less to the boundary between Paalaa-Uka and Paukauila, the true azimuth and distance from the end of Course 31 of Boundary Certificate No. 101 being $293^{\circ} 11'$ 100 feet more or less, the total distance along the center line being 1,400 feet more or less; Containing an area of 1.0 acre more or less.

[774]

ROAD 2-B.

Initial Point in Block 6.

Being a right-of-way 30 feet wide, extending 15 feet on each side of the center line of the present road.

Beginning at the Northerly end of this center line, on the Southerly side of Road 2 and the Easterly side of Kemoo Ditch Extension, the coordinates of said point of beginning referred to Government

Survey Triangulation Station "Halemano" being 10,420 feet North and 17,550 feet West, and running:

1. Southerly 1160 feet more or less to the boundary between Paalaa-Uka and Paukauila, the true azimuth and distance from the end of Course 30 of Boundary Certificate No. 101 being $113^{\circ} 11'$ 220 feet more or less, the total distance along the center line being 1180 feet more or less;
Containing an area of 0.8 acre more or less.

ROAD 2-C.

Initial Point in Block 6.

Being a right-of-way 30 feet wide, extending 15 feet on each side of the center line of the present road.

Beginning at the Southwesterly end of this center line, on the Northerly side of Road 2 and the Easterly side of Kemoo Ditch Extension, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Halemano" being 10,460 feet North and 17,550 feet West, and running:

1. Northeasterly 2100 feet more or less to the beginning of Helemano 6 Siphon, the total distance along the center line being 2,280 feet more or less;
Containing an area of 1.6 acres more or less.

ROAD 2-D.

Initial Point in Block 6.

Being a right-of-way 30 feet wide, extending 15 feet on each side of the center line of the present road.

Beginning at the Northerly end of this center line on the Southerly side of Road 2 and the Westerly side of Track I, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Halemano" being 9,300 feet North and 15,450 feet West, and running:

1. Southwesterly 750 feet more or less;
2. Southwesterly 900 feet more or less;
3. Easterly 700 feet more or less;
4. Southerly 980 feet more or less to the boundary between Paalaa-Uka and Kaheeka, the true azimuth and distance from the end of Course 29 of Boundary Certificate No. 101, being $303^{\circ} 41'$ 2100 feet more or less, the total distance along the center line being 3,600 feet more or less;

Containing an area of 2.5 acres more or less.

Road 2-E.

Initial Point in Block 6.

Being a right-of-way 30 feet wide, extending 15 feet on each side of the center line of the present road.

Beginning at the Northwesterly end of this center line, on the boundary between Paalaa-Uka and Kaheeka, the true azimuth and distance from the end of Course 29 of Boundary Certificate No. 101 being $303^{\circ} 41'$ 2400 feet more or less, and running:

1. Southeasterly 1900 feet more or less;
2. Southeasterly 3400 feet more or less to the boundary between Paalaa-Uka and Kaheeka, the true azimuth and distance from a pipe in concrete at the end of Course 28 of Boundary Certificate No. 101 being $123^{\circ} 41'$ 920 feet more or less, the total distance along the center line being 5,320 feet more or less;

Containing an area of 3.7 acres more or less.

[776]

ROAD 2-F.

Initial Point in Block 6.

Being a right-of-way 30 feet wide, extending 15 feet on each side of the center line of the present road.

Beginning at the westerly end of this center line, on the Northerly side of Road 2, 2000 feet more or less Southeasterly from Helemanq 6 Camp, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Halemano" being 7,850 feet North and 12,250 feet West, and running:

1. Northeasterly 1350 feet more or less;
2. Southeasterly 2900 feet more or less to the North-westerly side of Road 2-I, the total distance along the center line being 4,410 feet more or less;

Containing an area of 3.0 acres more or less.

ROAD 2-G.

Initial Point in Block 13.

Being a right-of-way 30 feet wide, extending 15 feet on each side of the center line of the present road.

Beginning at the Westerly end of this center line, on the Northeasterly side of Road 2-E, 50 feet more or less Southeasterly from Helemanō 9 Camp; the coordinates of said point of beginning referred to Government Survey Triangulation Station "Halemano" being 4,500 feet North and 10,950 feet West, and running:

1. Easterly 2150 feet more or less to the Westerly side of Road 2-J, the total distance along the center line being 2,280 feet more or less;

Containing an area of 1.6 acres more or less.

[777]

ROAD 2-H.

Initial Point in Block 7.

Being a right-of-way 30 feet wide, extending 15 feet on each side of the center line of the present road.

Beginning at the Northerly end of this center line, on the Southerly side of Road 2, the true azimuth and distance from Government Survey Triangulation Station "O'Reilly" being $230^{\circ} 00' 370$ feet more or less, and running:

1. Southerly 1100 feet more or less;
 2. Southeasterly 800 feet more or less to the Westerly side of Road 2-J, the total distance along the center line being 2,160 feet more or less;
- Containing an area of 1.5 acres more or less.

ROAD 2-I.

Initial Point in Block 7

Being a right-of-way 30 feet wide, extending 15 feet on each side of the center line of the present road:

Beginning at the Southwesterly end of this center line, on the Northerly side of Road 2, the true azimuth and distance from Government Survey Triangulation Station "O'Reilly" being $229^{\circ} 00'$ 410 feet more or less, and running:

1. Easterly 1300 feet more or less to the beginning of Helemano 54" siphon, the total distance along the center line being 1,500 feet more or less;
- Containing an area of 1.0 acre more or less.

ROAD 2-J.

Initial Point in Block 7.

Being a right-of-way 30 feet wide, extending 15 feet on each side of the center line of the present road.

Beginning at the Northerly end of this center line, on the Southerly side of Road 2, 1050 feet Easterly from Government Survey Triangulation Station "O'Reilly," and running:

1. Southerly 2500 feet more or less;
2. Southeasterly 6700 feet more or less;
3. Southeasterly 5800 feet more or less to the Northwest-
erly side of Road 4, 30 feet
more or less Southwesterly
from Helemanō Upper Reser-
voir Outlet Ditch, the total
distance along the center line
being 16,740 feet more or less;
Containing an area of 11.5
acres more or less.

Eliza R. P. Christian likewise to release all interest she may have in a concrete bridge or culvert built in 1925.

ROAD 2-K.

Initial Point in Block 13.

Being a right-of-way 30 feet wide, extending 15 feet on each side of the center line of the present road.

Beginning at the Westerly end of this center line, on the boundary between Paalaa-Uka and Kaheeka, the true azimuth and distance from a pipe in con-

crete at the end of Course 28 of Boundary Certificate No. 101 being $331^{\circ} 30' 30''$ 680 feet more or less, and running:

1. Easterly 2200 feet more or less;
 2. Northeasterly 500 feet more or less to Helemano 12 Camp, the total distance along the center line being 2,700 feet more or less;
- Containing an area of 1.8 acres more or less.

[779]

ROAD 2-L.

Initial Point in Block 19.

Being a right-of-way 30 feet wide, extending 15 feet on each side of the center line of the present road.

Beginning at the Southwesterly end of this center line, on the boundary between Paalaa-Uka and Kaheeka, the true azimuth and distance from the end of Course 28 of Boundary Certificate No. 101 being $331^{\circ} 30' 30''$ 3800 feet more or less, and running:

1. Northeasterly 2350 feet more or less;
 2. Easterly 2050 feet more or less to the Southwesterly side of Road 2-J, the total distance along the center line being 5,250 feet more or less;
- Containing an area of 3.6 acres more or less.

ROAD 2-M.

Initial Point in Block 15.

Being a right of way 30 feet wide, extending 15 feet on each side of the center line of the present road.

Beginning at the Westerly end of this center line, on the boundary between Paalaa-Uka and Kaheeka, the true azimuth and distance from a pipe in concrete at the end of Course 28 of Boundary Certificate No. 101 being $331^{\circ} 30' 30''$ 2900 feet more or less, and running:

- | | |
|------------------|---|
| 1. Easterly | 7450 feet more or less; |
| 2. Southeasterly | 600 feet more or less; |
| 3. Northeasterly | 1150 feet more or less to the Southerly side of Road 2, 1200 feet more or less Northeasterly from Government Survey Triangulation Station "Halemano," the total distance along the center line being 9,200 feet more or less; |

Containing an area of 6.4 acres more or less.

[780]

ROAD 2-N.

Initial Point in Block 15.

Being a right-of-way 30 feet wide, extending 15 feet on each side of the center line of the present road.

Beginning at the Northwesterly end of this center line, on the Southerly side of Road 2, 1250 feet

Northeasterly from Government Survey Triangulation Station "Helemano," and running:

1. Southeasterly 2500 feet more or less to the Westerly side of Road 3, the total distance along the center line being 2,500 feet more or less;
Containing an area of 1.7 acres more or less.

ROAD 2-O.

Initial Point in Block 23.

Being a right-of-way 30 feet wide, extending 15 feet on each side of the center line of the present road.

Beginning at the Northerly end of this center line, on the Southerly side of Road 2, 5400 feet more or less Easterly from Helemano Camp and 1500 feet more or less Southerly from Helemano Stream, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Helemano" being 950 feet South and 14,950 feet East, and running:

1. Southerly 1500 feet more or less;
2. Northeasterly 1200 feet more or less;
3. Southwesterly 1100 feet more or less;
4. Northeasterly 700 feet more or less, the total distance along the center line being 4,740 feet more or less;
Containing an area of 3.3 acres more or less.

ROAD 2-P.

Initial Point in Block 13.

Being a right-of-way 30 feet wide, extending 15 feet on each side of the center line of the present road.

Beginning at the Southwesterly end of this center line, on the boundary between Paalaa-Uka and Kaheeka, the true azimuth and distance from a pipe in concrete at the end of Course 28 of Boundary Certificate No. 101 being $123^{\circ} 41'$ 2120 feet more or less, and running:

1. Northeasterly 130 feet more or less to the Southwesterly side of Road 2-E, the total distance along the center line being 130 feet more or less;

Containing an area of 0.1 acre more or less.

ROAD 2-Q.

Initial Point in Block 13.

Being a right-of-way 30 feet wide, extending 15 feet on each side of the center line of the present road.

Beginning at the Southeasterly end of this center line, on the Easterly boundary of Grant 431 to Kauohanui, 20 feet more or less from the boundary between Paalaa-Uka and Kaheeka, and running:

1. Northwesterly 930 feet more or less;
2. Westerly 290 feet more or less to the Westerly boundary of Grant 431 to Kauohanui, the total distance along the center line being 1,220 feet more or less;

Containing an area of 0.8 acre.

[782]

ROAD 3.

Initial Point in Block 15.

Being a right-of-way 30 feet wide, extending 15 feet on each side of the center line of the present road.

Beginning at the Northeasterly end of this center line, on the Southerly side of Road 2, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Halemano" being 260 feet North and 3,350 feet East, and running:

1. Southwesterly 6250 feet more or less to Helemano Upper Reservoir Outlet Ditch;
2. Southwesterly 1600 feet more or less;
3. Southeasterly 1200 feet more or less;
4. Easterly 500 feet more or less to the boundary between Paalaa-Uka and Land Court Application 262, the total distance along the center line being 10,200 feet more or less;

Containing an area of 7.6 acres more or less.

Eliza R. P. Christian to release all interest she may have in that portion of the road and improvements between the Helemano Upper Reservoir Outlet Ditch and the Poamoho Stream, also in the new concrete bridge where Helemano Upper Reservoir Outlet Ditch crosses Road 3.

ROAD 3-A.

Initial Point in Block 21.

Being a right-of-way 30 feet wide, extending 15 feet on each side of the center line of the present road.

Beginning at the Northwestern end of this center line; on the Southerly side of Road 2-M, 120 feet more or less Northerly from Government Survey Triangulation Station "Halemano" and running:

- 1 Southeasterly 1850 feet more or less to Road 4-A;
 - 2 Southeasterly 1400 feet more or less to the Westerly side of Road 3, the total distance along the center line being 3,540 feet more or less;
- Containing an area of 2.4 acres more or less.

[783]

ROAD 3-B.

Initial Point in Block 21.

Being a right-of-way 30 feet wide, extending 15 feet on each side of the center line of the present road.

Beginning at the Westerly end of this center line, on the Easterly side of Road 3, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Halemano" being 3,050 feet South and 2,050 feet East, and running:

- 1 Southeasterly 1000 feet more or less to Road 5;
 - 2 Southeasterly 1650 feet more or less;
 - 3 Northeasterly 300 feet more or less;
 - 4 Southeasterly 650 feet more or less to the Northerly side of Road 3-D, the total distance along the center line being 3,600 feet more or less;
- Containing an area of 2.6 acres more or less.

ROAD 3-C.**Initial Point in Block 21.**

Being a right-of-way 30 feet wide, extending 15 feet on each side of the center line of the present road.

Beginning at the Westerly end of this center line, on the Easterly side of Road 3, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Halemano" being 3,350 feet South and 1,950 feet East, and running:

1. Easterly 650 feet more or less to the Southerly side of Road 3-B, the total distance along the center line being 650 feet more or less;
Containing an area of 0.4 acre more or less.

[784]

ROAD 3-D.**Initial Point in Block 26.**

Being a right-of-way 30 feet wide, extending 15 feet on each side of the center line of the present road.

Beginning at the Southwesterly end of this center line, on the Northeasterly side of Road 3, 400 feet more or less Northerly from Poamoho Stream, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Halemano" being 6,950 feet South and 150 feet East, and running:

1. Northeasterly 7250 feet more or less;
2. Northwesterly 350 feet more or less;
3. Northeasterly 1250 feet more or less;

4. Northerly

1150 feet more or less to the Southerly side of Road 5, 950 feet more or less Westerly from Helemano Camp, the total distance along the center line being 10,000 feet more or less;

Containing an area of 6.9 acres more or less.

ROAD 4.

Initial Point in Block 21.

Being a right-of-way 30 feet wide, extending 15 feet on each side of the center line of the present road.

Beginning at the Easterly end of this center line, on the Westerly side of Road 3, 300 feet more or less Easterly from Helemano School, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Halemano" being 4,450 feet South and 1,500 feet East, and running:

1. Northwesterly
2. Southwesterly
3. Westerly

1450 feet more or less to Road 4-A;

3600 feet more or less;

2000 feet more or less to the boundary between Pāalaa-Uka and Kaheeka, the true azimuth and distance from the end of Course 27 of Boundary Certificate No. 101 being $151^{\circ} 30' 30''$ 1120 feet more or less, the total distance along the center line being 7,440 feet more or less;

Containing an area of 5.1 acres more or less.

ROAD 4-A.**Initial Point in Block 21.**

Being a right-of-way 30 feet wide, extending 15 feet on each side of the center line of the present road.

Beginning at the Southwesterly end of this center line, on the Northerly side of Road 4 near the Southeast corner of Brodie 2 Camp, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Halemano" being 3,850 feet South and 160 feet East, and running:

1. Northeasterly 2700 feet more or less to the Southwesterly side of Road 3-A, the total distance along the center line being 2700 feet more or less;

Containing an area of 1.9 acres more or less.

ROAD 4-B.**Initial Point in Block 20.**

Being a right-of-way 30 feet wide, extending 15 feet on each side of the center line of the present road.

Beginning at the Northerly end of this center line, on the Southeasterly side of Road 4, 1200 feet more or less Southwesterly from Brodie 2 Camp, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Halemano" being 4,770 feet South and 1,350 feet West, and running:

1. Southerly 750 feet more or less, the total distance along the center line being 750 feet more or less;
Containing an area of 0.5 acre more or less.

[786]

ROAD 4-C.

Initial Point in Block 20.

Being a right-of-way 30 feet wide, extending 15 feet on each side of the center line of the present road.

Beginning at the Northwesterly end of this center line, on the Southerly side of Road 4, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Halemano" being 5,550 feet South and 4,050 feet West, and running:

1. Southeasterly 1200 feet to the boundary between Paalaa-Uka and Land Court Application 262, the total distance along the center line being 1,200 feet more or less;
Containing an area of 0.8 acre more or less.

ROAD 5.

Initial Point in Block 26.

Being a right-of-way 30 feet wide, extending 15 feet on each side of the center line of the present road.

Beginning at the Southwesterly end of this center line, the true azimuth and distance from the end of Course 11 of Land Court Application 262 being 315° 20' 1900 feet more or less, 3500 feet more or less.

Southwesterly from Kaukonahua Camp, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Helemano" being 10,850 feet South and 3,850 feet East, and running:

1. Easterly 2600 feet more or less;
 2. Northeasterly 900 feet more or less;
 3. Easterly 4800 feet more or less, 220 feet more or less Westerly from the North-east corner of Grant 1092 to Paaluhi;
 4. Northerly 2300 feet more or less to Road 5-D;
 5. Northwesterly 920 feet more or less to Road 6;
 6. Northwesterly 1100 feet more or less to Poamoho Stream;
 7. Northeasterly 550 feet more or less to Helemaho Upper Ditch (Poamoho Branch);
 8. Northerly 2450 feet more or less;
 9. Westerly 900 feet more or less to Helemano Camp;
 10. Westerly 5300 feet more or less;
 11. Southwesterly 3400 feet more or less to the Southeasterly side of Road 3, 350 feet more or less Easterly from Helemano School, the total distance along the center line being 28,800 feet more or less;
- Containing an area of 19.7 acres more or less.

[787]

ROAD 5-A.

Initial Point in Block 22.

Being a right-of-way 30 feet wide, extending 15 feet on each side of the center line of the present road.

Beginning at the Southwesterly end of this center line, on the Northerly side of Road 5, 2500 feet more or less Westerly from Helemano Camp, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Halemano" being 2,300 feet South and 6,100 feet East, and running:

1. Northwesterly 2900 feet more or less to the Southeast-
erly side of Road 2; the total
distance along the center line
being 2,900 feet more or less;
Containing an area of 2.0 acres
more or less.

ROAD 5-B.

Initial Point in Block 22.

Being a right-of-way 30 feet wide, extending 15 feet on each side of the center line of the present road.

Beginning at the Southwesterly end of this center line, on the Northerly side of Road 5, 950 feet more or less Westerly from Helemano Camp, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Halemano" being 2,150 feet South and 7,600 feet East, and running:

1. Northwesterly 2600 feet more or less to the Southerly [788] side of Road 2, 350 feet more or less Westerly from Old Muto Camp, the total distance along the center line being 2,600 feet more or less;
Containing an area of 1.8 acres more or less.

ROAD 5-C.

Initial Point in Block 22.

Being a right-of-way 30 feet wide, extending 15 feet on each side of the center line of the present road.

Beginning at the Westerly end of this center line, on the Easterly side of Road 5, 1400 feet more or less Southeasterly from Helemano Camp, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Halemano" being 3,350 feet South and 10,600 feet East, and running:

1. Easterly 3950 feet more or less;
2. Southeasterly 2050 feet more or less;
3. Easterly 2000 feet more or less, the total distance along the center line being 8,040 feet more or less;
Containing an area of 5.5 acres more or less.

ROAD 5-D.

Initial Point in Block 27.

Being a right-of-way 30 feet wide, extending 15 feet on each side of the center line of the present road.

Beginning at the Westerly end of this center line, 4200 feet more or less Southeasterly from Helemano Camp, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Halemano" being 6,250 feet South and 11,500 feet East, and running:

1. Easterly 3800 feet more or less, 1000 feet more or less Southwesterly from the end of Course 24 of Boundary Certificate No. 101, the total distance along the center line being 3,800 feet more or less;
Containing an area of 2.6 acres more or less.

[789]

ROAD 5-E.

Initial Point in Block 27.

. Being a right-of-way 30 feet wide, extending 15 feet on each side of the center line of the present road.

Beginning at the Westerly end of this center line, on the Southeasterly side of Road 5, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Halemano" being 8,550 feet South and 11,700 feet East, and running:

1. Easterly 120 feet more or less to the boundary between Grant 973 to James Robinson, Robert Lawrence and Robert W. Holt and Grant 1092 to Paaluhi Westerly 100 feet more or less from the Northeast corner of Grant 1092 to Paaluhi, the total distance along the center line being 120 feet more or less;
Containing an area of 0.1 acre more or less.

ROAD 5-F.

Being a right-of-way 30 feet wide, extending 15 feet on each side of the center line of the present road.

Beginning at the Westerly end of this center line on the boundary between Grant 973 to James Robinson, Robert Lawrence and Robert W. Holt and Grant 1092 to Paaluhi, 5300 feet more or less Easterly from Kaukonahua Camp and 30 feet more or less Southerly from the Northeast corner of Grant 1092 to Paaluhi, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Halemano" being 8,520 feet South and 11,870 feet East, and running:

1. Easterly

7750 feet more or less to the Easterly boundary of Grant 973 to James Robinson, Robert Lawrence and Robert W. Holt, the total distance along the center line being 7,750 feet more or less;

Containing an area of 5.3 acres more or less.

[790]

ROAD 6.

Initial Point in Block 22.

Being a right-of-way 30 feet wide, extending 15 feet on each side of the center line of the present road.

Beginning at the Northeasterly end of this center line, on the Southerly side of Road 5, 3300 feet more or less Southeasterly from Heleman Camp, the co-

ordinates of said point of beginning referred to Government Survey Triangulation Station "Halemano" being 5,450 feet South and 11,000 feet East, and running:

1. Southwesterly 1700 feet more or less;
 2. Westerly 3950 feet more or less to Road 6-C;
 3. Southwesterly 700 feet more or less;
 4. Southeasterly 500 feet more or less along Kaukounahua Camp;
 5. Southwesterly 1300 feet more or less;
 6. Southwesterly 2250 feet more or less to the Northwest-
erly side of Road 5; the total
distance along the center line
being 10,740 feet more or less;
- Containing an area of 7.4 acres
more or less.

ROAD 6-A.

Being a right-of-way 30 feet wide, extending 15 feet on each side of the center line of the present road.

Beginning at the Westerly end of this center line, on the Southeasterly side of Road 6, 3800 feet more or less Southerly from Heleman Camp, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Halemano" being 6,350 feet South and 10,050 feet East, and running:

1. Easterly 1300 feet more or less to the Westerly
side of Road 5, the total dis-
tance along the center line be-
ing 1,300 feet more or less;
- Containing an area of 0.9 acre
more or less.

ROAD 6-B.**Initial Point in Block 26.**

Being a right-of-way 30 feet wide, extending 15 feet on each side of the center line of the present road.

Beginning at the Westerly end of this center line, on the Easterly side of Road 6 near the Southwest corner of Kaukonahua Camp, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Halemano" being 7,750 feet South and 5,540 feet East, and running:

1. Easterly
2. Southerly

5150 feet more or less;

750 feet more or less to the Northerly side of Road 5, the total distance along the center line being 5,900 feet more or less;

Containing an area of 4.1 acres more or less.

ROAD 6-C.**Initial Point in Block 26.**

Being a right-of-way 30 feet wide, extending 15 feet on each side of the center line of the present road.

Beginning at the Southwesterly end of this center line, on the boundary between Grant 973 to James Robinson, Robert Lawrence and Robert W. Holt and Land Court Application 262, the true azimuth and distance from the end of Course 26 of Boundary Certificate No. 101 being $4^{\circ} 49'$ 920 feet more or less, the coordinates of said point of beginning referred to Government Survey Triangulation Station

"Halemano" being 7,670 feet South and 2,620 feet East, and running:

1. Northeasterly 950 feet more or less;
2. Easterly 2350 feet more or less to the Northwest-
erly side of Road 6, 300 feet
more or less Northerly from
Kaukonahua Camp, the total
distance along the center line
being 3,300 feet more or less;
Containing an area of 2.3 acres
more or less.

[792]

ROAD 7.

Initial Point in Block 5.

Being a right-of-way 30 feet wide, extending 15 feet on each side of the center line of the present road.

Beginning at the Westerly end of this center line, on the Southwesterly boundary of Grant 235, Apana 2 to Jerome Topliff and Lewis Johnson, 800 feet more or less from the Southeast corner (marked 5 on map) of Grant 235, Apana 2 to Jerome Topliff and Lewis Johnson, and running:

1. Easterly 500 feet more or less, the total distance
along the center line being
500 feet more or less;
Containing an area of 0.5 acre
more or less.

[793]

SCHEDULE 9—TRANSMISSION LINE.

TRANSMISSION LINE 1.

Initial Point in Block 1.

Beginning at the Southerly end of this center line in the middle of Transmission Line 5 at the Southerly side of Domestic Water Line 13, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Halemano" being 12,300 feet North and 20,900 feet West, and running:

1. Northeasterly 1500 feet more or less;
2. Northerly 600 feet more or less to the Easterly side of Helemano 3 Reservoir;
3. Northeasterly 1350 feet more or less along the Northwesterly side of Track C;
4. Northerly 350 feet more or less to the end of Course 12 of Boundary Certificate No. 101, the total distance along the center line being 3,800 feet more or less.

Eliza R. P. Christian likewise to release all interest she may have in all the improvements thereon located.

TRANSMISSION LINE 2.

Initial Point in Block 2.

Beginning at the Southeasterly end of this center line, on the Northwesterly side of Opaepula 9 Camp, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Halemano" being 13,700 feet North and 16,500 feet West, and running:

1. Northwesterly 2600 feet more or less;
2. Northerly 300 feet more or less to the middle of Opaaula Stream, 150 feet more or less Southerly of Pump 3, the total distance along the center line being 2,900 feet more or less.

Eliza R. P. Christian likewise to release all interest she may have in all the improvements thereon located. [794]

TRANSMISSION LINE 3.

Initial Point in Block 3.

Beginning at the Southerly end of this center line, on the Northerly side of Opaaula 10 Camp, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Halemano" being 12,450 feet North and 11,550 feet West, and running:

1. Northerly 1400 feet more or less to the middle of Opaaula Stream, the total distance along the center line being 1,400 feet more or less.

Eliza R. P. Christian likewise to release all interest she may have in all the improvements thereon located.

TRANSMISSION LINE 4.

Initial Point in Block 9.

Beginning at the Southeasterly end of this center line in Waialua Camp, the coordinates of said point of beginning referred to Government Survey Tri-

angulation Station "Halemano" being 8,450 feet North and 1,450 feet East, and running:

1. Northwesterly 1750 feet more or less;
2. Northwesterly 2050 feet more or less;
3. Northerly 400 feet more or less to the middle of Opauala Stream, the total distance along the center line being 4,200 feet more or less.

Eliza R. P. Christian likewise to release all interest she may have in all the improvements thereon located.

TRANSMISSION LINE 5.

Initial Point in Block 5.

Beginning at the Southerly end of this center line, on the boundary between Paalaa-Uka and Paukauila, the true azimuth and distance from the end of Course 31 of Boundary Certificate No. 101 being $293^{\circ} 11' 140$ feet more or less, and running:

1. Northerly 1320 feet more or less to the Southerly side of Domestic Water Line 13;
2. Northwesterly 1850 feet more or less along the Southwesterly side of Domestic Water Line 13, 100 feet more or less Southwesterly from Helemano 1 Camp, the total distance along the center line being 3,180 feet more or less.

Eliza R. P. Christian likewise to release all interest she may have in all the improvements thereon located. [795]

TRANSMISSION LINE 6.

Initial Point in Block 6.

Beginning at the Southwesterly end of this center line on the boundary between Paalaa-Uka and Paukauila, the true azimuth and distance from the end of Course 30 of Boundary Certificate No. 101 being $113^{\circ} 11' 170$ feet more or less, and running:

1. Northeasterly 1100 feet more or less to the middle of Transmission Line 7, 800 feet more or less Southeast-erly from Helemano 4-A Do-mestic Water Reservoir, the total distance along the center line being 1100 feet more or less.

Eliza R. P. Christian likewise to release all inter-est she may have in all the improvements thereon located.

TRANSMISSION LINE 7.

Initial Point in Block 6.

Beginning at the Southeasterly end of this center line in Helemano 6 Camp, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Halemano" being 8,750 feet North and 14,350 feet West, and running:

1. Southwesterly 100 feet more or less;
2. Northwesterly 3800 feet more or less;
3. Westerly 700 feet more or less, the total distance along the center line being 4,600 feet more or less.

Eliza R. P. Christian likewise to release all inter-est she may have in all the improvements thereon located.

Eliza R. P. Christian vs.

TRANSMISSION LINE 8

Initial Point in Block 5.

Beginning at the Southeasterly end of this center line, on the Northeasterly boundary of Grant 238 to John F. Anderson and Franklin Davis, 370 feet more or less Southeasterly from the Northeast corner (marked 2 on map) of Grant 238 to John F. Anderson and Franklin Davis, and running:

1. Northwesterly 1230 feet more or less to the Westerly side of Grant 238 to John F. Anderson and Franklin Davis, 300 feet more or less Southerly from the Northwest corner (marked 1 on map) of Grant 238 to John F. Anderson and Franklin Davis, the total distance along the center line being 1,230 feet more or less.

Eliza R. P. Christian likewise to release all interest she may have in all the improvements thereon located. [796]

TRANSMISSION LINE 9.

Initial Point in Block 5.

Beginning at the Northwesterly end of this center line, on the Northerly boundary of Grant 235, Apana 2 to Jerome Topliff and Lewis Johnson, 390 feet more or less Southeasterly from the Northeast corner (marked 3 on map) of Grant 235, Apana 2 to Jerome Topliff and Lewis Johnson, and running:

1. Southeasterly 710 feet more or less to the Westerly side of Pump 10 Site, the total distance along the center line being 710 feet more or less.

Eliza R. P. Christian likewise to release all interest she may have in all the improvements thereon located.

TRANSMISSION LINE 10

Initial Point in Block 4.

Beginning at the Northwestern end of this center line, on the Westerly boundary of Grant 235, Apana 1 to Jerome Topliff and Lewis Johnson, 100 feet more or less Northerly from the Southwest corner of Grant 235, Apana 1 to Jerome Topliff and Lewis Johnson, and running:

1. Southeasterly 320 feet more or less to the Southerly boundary of Grant 235, Apana 1 to Jerome Topliff and Lewis Johnson, the total distance along the center line being 320 feet more or less.

Eliza R. P. Christian likewise to release all interest she may have in all the improvements thereon located.

TRANSMISSION LINE 11.

Initial Point in Block 5.

Beginning at the Northwestern end of this center line, at the center line of Transmission Line 5, 140 feet more or less Southeasterly from the end of Course 31 of Boundary Certificate No. 101, the

coordinates of said point of beginning referred to Government Survey Triangulation Station "Halemano" being 10,600 feet North and 20,700 feet West, and running:

1. Southeasterly. 3430 feet more or less near and along Course 31 of Boundary Certificate No. 101 to the center line of Transmission Line 6, the total distance along the center line being 3,430 feet more or less.

Eliza R. P. Christian likewise to release all interest she may have in all the improvements thereon located. [797]

SCHEDULE 10—TELEPHONE SYSTEM.

Eliza R. P. Christian to release all interest she may have in the existing telephone system. [798]

[Title of Court and Cause.]

PETITION FOR APPEAL AND AFFIDAVIT OF BARRY S. ULRICH.

Filed April 18, 1935 at 1:50 o'clock p. m. Robert Parker, Jr., Clerk Supreme Court. [799]

PETITION FOR APPEAL.

To: The Honorable Acting Chief Justice and Associate Justices of the Supreme Court of the Territory of Hawaii:

Comes now ELIZA R. P. CHRISTIAN, an incompetent person, by HERMAN V. von HOLT,

her guardian, and, deeming herself aggrieved by the final decision of this Court entered herein on, to-wit: May 3, 1934, and by the Final Decree of this Court entered herein on, to-wit: the 25th day of March, 1935, hereby prays that an appeal may be allowed from the said Decree to the United States Circuit Court of Appeals for the Ninth Circuit under and according to the laws of the United States in that behalf made and provided, and that a transcript of the record, proceedings, and documentary exhibits upon which said decree was made and based, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit. And in connection with this, her Petition, your petitioner herein presents [800] her assignment of errors.

Your petitioner further shows that the said Decree was rendered in a proceeding in equity, and that the amount involved, exclusive of costs and interests, exceeds the sum of Five Thousand Dollars, (\$5,000.00).

DATED at Honolulu, T. H., April 18, 1935.

BARRY S. ULRICH,

CHAS. M. HITE,

Attorneys for
Petitioner-Appellant.

Territory of Hawaii,
City and County of Honolulu—ss.

HERMAN V. von HOLT, being first duly sworn,
on oath deposes and says: That he is the Herman

V. von HOLT named as guardian for Eliza R. P. Christian, an incompetent person, in the foregoing petition for appeal; that he has read the said petition and knows the contents thereof; that he makes this verification for and on behalf of the said Eliza R. P. Christian and as her guardian for the reason that she is incompetent to make the same on her own behalf; that the matters and things set forth in said foregoing petition are true of his own knowledge; and further affiant says that the amount involved, exclusive of costs and interest, exceeds the sum of Five Thousand Dollars (\$5,000.00).

HERMAN V. von HOLT.

Subscribed and sworn to before me this 18th day of April, 1935.

[Seal]

FRANK F. FERNANDES,
Notary Public, First Judicial Circuit,
Territory of Hawaii. [801]

AFFIDAVIT OF BARRY S. ULRICH.

Territory of Hawaii,
City and County of Honolulu—ss.

BARRY S. ULRICH, being first duly sworn, on oath deposes and says: That he is an attorney at law and one of the attorneys for the petitioner in the above-entitled matter; that he is now and at all times has been one of the attorneys of record in the above-entitled cause throughout the various proceedings which have transpired in said cause.

and in the court below, and that he is familiar with the subject matter of the said litigation.

Affiant says that by the judgment and decree of the Honorable A. M. Cristy, Second Judge of the Circuit Court of the First Judicial Circuit, Territory of Hawaii, sitting at Chambers, in Equity, it was adjudged and decreed, among other things, that that certain deed dated May 2, 1910, by and between John Dominis Holt, Eliza R. P. Christian, Annie Holt Kentwell and Lawrence Kentwell, therein named as grantors, and James L. Holt, therein named as grantee, be [802] canceled, annulled, and adjudged to be void and of no effect as to Eliza R. P. Christian, named as grantor therein; that the interest in the property covered by said deed of Eliza R. P. Christian be reconveyed to her by respondent, Waialua Agricultural Company, Limited; that that certain lease dated March 17, 1905, by and between Carlos A. Long et al, and Waialua Agricultural Company, Limited, be canceled and annulled as to the said Eliza R. P. Christian; that certain rights with respect to improvements on said properties as particularly set forth in said decree be protected in the Waialua Agricultural Company, Limited, as in said decree specified, and that said Waialua Agricultural Company, Limited, do pay to said Eliza R. P. Christian, by payment to her duly appointed and acting guardian, the total sum of Six Hundred Six Thousand Seven Hundred Eighty-five and 75/100 Dollars (\$606,785.75).

Affiant says that by the final decree entered in this court in said matter on, to-wit: the 25th day of March, 1935, the rendition and entry of which decree is assigned as error herein, said decree of the said Circuit Judge, sitting in Equity as aforesaid, has been affirmed in part only and has been reversed in part, and that said decree, among other things, has been affirmed with respect to its provisions providing for the cancellation of the aforesaid deed of May 2, 1910, and the reconveyance to said Eliza R. P. Christian of her interest in the lands covered by said deed, but that it has been reversed, among other things, with respect to those provisions in the decree of [803] said Circuit Judge canceling and annulling the aforesaid lease of May 17, 1905, and the aforesaid instrument of August 31, 1906, and further with respect to the provision requiring the payment of the said sum of Six Hundred Six Thousand Seven Hundred Eighty-five and 75/100 Dollars (\$606,785.75) by said Waialua Agricultural Company, Limited to said Eliza R. P. Christian, which provision in said final decree has been eliminated, and that the decree of the Circuit Judge has been reduced in its effect and the amount by which said Waialua Agricultural Company, Limited was by said decree of said Circuit Judge ordered to reimburse said Eliza R. P. Christian has been diminished by an amount greatly in excess of the sum of Five Thousand Dollars (\$5,000.00), exclusive of costs and interest, and that the amount now involved in the prosecution of this appeal in

this cause is consequently an amount greatly in excess of said sum of Five Thousand Dollars (\$5,000.00) exclusive of costs and interest, all as more fully appears from the records in said cause.

This affidavit is made in support of the foregoing petition for the allowance of an appeal, and affiant further says that as to said petition for appeal, he knows the contents thereof, and that the same is true of his own knowledge.

BARRY S. ULRICH.

Subscribed and sworn to before me this 18th day of April, 1935.

[Seal]

KATHRYN R. CONNOR,

Notary Public, First Judicial Circuit,
Territory of Hawaii. [804]

[Title of Court and Cause.]

ASSIGNMENT OF ERRORS ON APPEAL.

Filed April 18, 1935 at 1:50 o'clock p. m. Robert Parker, Jr., Clerk Supreme Court. [805]

Comes now ELIZA R. P. CHRISTIAN, an incompetent person, by HERMAN V. VON HOLT, her guardian, appellant herein, and, in connection with her petition for appeal, says that in the record, proceedings, decision and decree in the above entitled matter, manifest error has intervened to the prejudice of her, the said appellant, as follows, to-wit:

1.

That the Supreme Court of the Territory of Hawaii, in its decision and opinion entered May 3, 1934 and in its final decree entered March 25, 1935, committed error in not completely affirming the judgment and decree of the trial court made and entered September 6, 1932, ordering and decreeing that the deed of May 2, 1910, the lease of March 17, 1905, and the instrument of August 31, 1906, be all and each of them canceled and set aside as to Eliza R. P. Christian; that Waialua Agricultural [806] Company, Limited do re-transfer to Eliza R. P. Christian her interest in the lands involved, and do pay to her the sum of \$606,785.75, and that certain rights in said Waialua Agricultural Company, Limited be protected as in said decree provided.

2.

That the Supreme Court of the Territory of Hawaii, in its decision entered May 3, 1934 and in its final decree entered March 25, 1935, committed error in reversing and setting aside the decree of the trial judge entered September 6, 1932 in so far as said decree provided for the canceling and setting aside as to Eliza Christian of the lease dated March 17, 1905.

3.

That the Supreme Court of the Territory of Hawaii, in its final decree entered March 25, 1935 and in the decision pursuant to which said decree was entered, committed error in reversing and set-

ting aside the judgment and decree of the trial judge made and entered on September 6, 1932 in so far as said decree provided for the canceling and setting aside of that certain instrument dated August 31, 1906.

4.

That the Supreme Court of the Territory of Hawaii committed error in its final decree entered in said cause in not canceling and setting aside as to Eliza R. P. Christian the lease dated March 17, 1905.

5.

That the Supreme Court of the Territory of Hawaii committed error in its final decree entered in said cause in not canceling and setting aside the instrument dated August 31, 1906.

6.

That the Supreme Court of the Territory of Hawaii, in [807] its final decree entered March 25, 1935 and in the decision pursuant to which said decree was entered, committed error in reversing and setting aside the decree of the trial judge entered in said cause September 6, 1932, in so far as said decree ordered and directed the payment of the sum of \$606,785.75 by Waialua Agricultural Company, Limited to Eliza R. P. Christian, petitioner herein.

7.

That the Supreme Court of the Territory of Hawaii committed error in its final decree entered

in said cause in failing to provide for the payment of \$606,785.75, or of any sum at all, by Waialua Agricultural Company, Limited to Eliza R. P. Christian, petitioner herein.

8.

That the Supreme Court of the Territory of Hawaii, in its decision entered May 3, 1934, committed error in holding and deciding that the lease dated March 17, 1905 was and should be considered binding as against Eliza R. P. Christian, notwithstanding her mental incompetence to execute the same.

9.

That the Supreme Court of the Territory of Hawaii committed error in its decision of May 3, 1934 in holding and deciding that Eliza R. P. Christian's joinder in or assent to the lease of March 17, 1905 was in fact beneficial as to her.

10.

That the Supreme Court of the Territory of Hawaii committed error in its said decision in holding and deciding that the lease of 1905, even if beneficial to the mental incompetent, was binding against her to any extent beyond that of requiring an accounting for benefits actually received under [806] it upon cancellation.

11.

That the Supreme Court, in its said decision, committed error in holding and deciding that the lease of one mentally incompetent, who has not

been judicially declared insane, to a lessee without knowledge of the incompetency, for an adequate consideration which was never paid, and which has been performed only in the use of the property by the lessee, without accounting for the value of such user, if accompanied by no fraud, cannot be canceled, even though the lessee can be fully and completely restored to the status quo ante.

12.

That the Supreme Court in its said opinion and decision committed error in holding and finding that the lease of 1905 had been "fully performed" as between Eliza Christian and Waialua Agricultural Company, Limited, when the evidence conclusively shows that there was never a particle of performance under and pursuant to the provisions of said lease, the occupancy throughout having been adverse to and inconsistent with the effective existence of such a lease at all.

13.

The Supreme Court of the Territory of Hawaii committed error in its decision made and entered April 18, 1931, and in the interlocutory remanding order entered pursuant thereto, in holding and deciding that it was necessary that the said lease of March 17, 1905 be canceled or annulled at all in order that its invalidity might appear or that recovery be had by petitioner for rents for user of her lands by respondent upon cancellation of the deed of 1910. [809]

14.

That the Supreme Court in its said decision of April 18, 1931 committed error in not then affirming the decree of the trial judge dated October 16, 1929.

15.

That the Supreme Court of the Territory of Hawaii, in its final decree entered March 25, 1935 and in the decision pursuant to which said decree was entered, committed error in not holding and finding that the instrument of August 31, 1906 was wholly and completely void.

16.

That the Supreme Court committed obvious error in its final decree and in the decision pursuant to which said decree was entered, in finding and deciding that the instrument of 1906 could not have the effect of the conveyance of a life estate and then in giving it exactly that effect by depriving petitioner of a right to accounting for rents throughout the remainder of her life.

17.

That the Supreme Court committed error in its decision and opinion entered May 3, 1934 in deciding and holding that the lease of 1905 was incontestable by Eliza Christian for the reason that it was taken in ignorance of her imbecility and was beneficial to her.

18.

That the Supreme Court committed error in its said decision in not holding that the said lease of 1905 was voidable by Eliza Christian for the reason that upon its avoidance the parties could be restored substantially to status quo ante. [810]

19.

That the Supreme Court committed error in its decision of May 3, 1934 in deciding and holding that the instrument of 1906 was incontestable by Eliza for the reason that the Waialua Company purchased rights under said instrument from Annie Kentwell for a valuable consideration in ignorance of Eliza's imbecility.

20.

That the Supreme Court committed error in not holding and deciding that whatever rights Annie Kentwell may have had by virtue of the instrument of 1906, were personal, non-assignable (except as in said instrument provided) and in fact were never assigned to ~~Waialua~~ Agricultural Company, Limited at all.

21.

That the Supreme Court committed error in its decision entered May 3, 1934 in deciding and holding that the trial judge committed error in decreeing cancellation of the lease of 1905 for the reason that the trial judge, in decreeing such cancellation, had merely followed the rulings and instructions of said Supreme Court theretofore announced and

made in its prior decision of April 18, 1931, and in the order of remand entered pursuant thereto, which ruling the Supreme Court, in its last decision and opinion, has not reversed, altered, or amended.

22.

That the Supreme Court committed error in its decision entered May 3, 1934 in deciding and holding that the trial judge committed error in decreeing cancellation of the instrument of 1906 for the reason that the trial judge, in decreeing such cancellation, had merely followed the rulings and instructions [811] of said Supreme Court theretofore announced and made in its prior decision of April 18, 1931, and in the order of remand entered pursuant thereto, which ruling the Supreme Court, in its last decision and opinion, has not reversed, altered, or amended.

23.

That the Supreme Court committed error in its final decree entered March 25, 1935 and in its decision pursuant to which said decree was entered, in holding and decreeing that the lease of 1905 should be considered as binding, effective in enforcing it as against Eliza Christian, and then in refusing to enforce it, except to a very limited extent, in her favor according to its expressed provisions.

24.

That the Supreme Court committed error in its final decree and in the decision pursuant to which said decree was entered, in decreeing that Eliza

R. P. Christian should be allowed credit for improvements only to the extent that they were placed on said properties prior to 1910, whereas the express provisions of the lease provided that all improvements should revert as of the date of the termination of the lease, March 31, 1930.

25.

That the Supreme Court committed error in its final decree and in its decision pursuant to which said decree was entered in holding and decreeing in substance and effect that the lease conveying a term of years, expiring in 1930, should be and was fully effective, and at the same time that the instrument of 1906, held by said court to convey a much larger estate in interest, was also fully and completely effective. [812]

26.

That the Supreme Court committed error in its said final decree and decision in not holding and decreeing that the instrument of 1906 could be and was at most effective as an assignment of the rents payable under the lease of 1905.

27.

That the Supreme Court in its final decree and decision committed error in deciding and decreeing that the instrument of 1906 was incontestable even as to Annie Kentwell, who took with full knowledge of the incompetency of the said Eliza Christian.

28.

That the Supreme Court committee error in its final decree and decision in not holding that the instrument of 1906 as to Annie Kentwell, even if considered as merely voidable, could be held binding as against the incompetent only to the extent of requiring an accounting for the reasonable worth of necessities actually furnished.

29.

That the Supreme Court, in its opinion and decision entered May 3, 1934, committed error in that said opinion and decision is inconsistent with itself, in that in one part thereof said Supreme Court holds that the instrument of 1906 could not be and was not effective as the conveyance of a life estate because the husband of Eliza Christian had not joined therein, while in another place in the same decision said Supreme Court holds and decides that said instrument, if sustained, affords "a complete protection to the W. A. Co. against any award of rents or damages," large amounts of rents having already accrued to and been received by the said Waiahua Agri- [813] cultural Company, Limited for use and user of the properties in question after the expiration of the lease of 1905 and to a time in the future which may exceed even the life of the said Eliza R. P. Christian.

30.

That the Supreme Court committed error in its final decree and decision in attempting to and in

granting relief to respondent Waialua Agricultural Company which it had no jurisdiction to grant in these proceedings and which could only properly be granted in an action or proceedings for partition.

31.

That the Supreme Court committed error in its final decree and decision in attempting to grant and in granting rights by way of partition to respondent Waialua Agricultural Company, Limited without even attempting to grant or to settle in petitioner, Eliza R. P. Christian, corresponding and similar rights, without the recognition of which no partition could be effected even if these were proceedings for partition rather than merely for cancellation and accounting.

32.

That the Supreme Court, in its final decree and decision, committed error in ordering and decreeing that Eliza R. P. Christian restore to Waialua Agricultural Company, Limited, on cancellation of the instrument of 1910, \$30,000 with interest thereon, claimed to have been received by her under said instrument, and in not even attempting to require Waialua Agricultural Company, Limited to account for any one of the innumerable benefits admittedly received by and enjoyed by it under, by virtue of, and pursuant to the execution of said same instrument. [814]

33.

That the Supreme Court committed error in its final decree and decision in holding and deciding

that the lease of 1905 protected the respondent Waialua Agricultural Company, Limited against any obligation to account by virtue of the cancellation of the deed of 1910, and in giving said lease no such effect at all with respect to the corresponding rights and obligations of Eliza R. P. Christian.

34.

That the Supreme Court committed error in its final decree and decision in restoring respondent Waialua Agricultural Company, Limited to its status quo ante, and in failing completely to even give serious consideration to the matter of restoring petitioner to her status quo ante upon cancellation of the deed of 1910.

35.

That the Supreme Court committed error in holding and deciding that the lease of 1905 saved Waialua Agricultural Company from the obligation to account for the reasonable value of the use and user of plaintiff's land throughout its entire term, or until 1930, and at the same time in holding that it gave to petitioner rights with respect to improvements only until 1910.

36.

That the Supreme Court committed error in its final decree and decision in holding that a grantee who takes a conveyance from a mental incompetent, with full knowledge of the incompetency, may nevertheless thereafter convey perfectly good title to an innocent third person and thus place the property

completely beyond reach of the incompetent either at law or in equity. [815]

37.

That the Supreme Court, in its final decree and decision, committed error in not holding that the conveyance of a mental incompetent to one taking with full knowledge of the incompetency is wholly void.

38.

That the Supreme Court, in its final decision, committed error in holding that Waialua Agricultural Company, Limited was in fact a purchaser in good faith and for a valuable consideration of all rights purported to be conveyed by the instrument of 1906.

39.

That the Supreme Court, in its final decision, committed error in failing to even give consideration to the fact that in the purchase from Annie Kentwell of her rights and of the rights of John D. Holt in and to the properties in question, the sum of \$5,000 paid to the said Annie Kentwell, considered as consideration for the right to receive all income which might accrue on the property during the remainder of the life of Eliza Christian, would be and was wholly, utterly, and absurdly inadequate.

40.

That the Supreme Court committed error in its decision of April 18, 1931, as well as in its final

decision of May 3, 1934, in holding and deciding that the question of the validity as to Eliza Christian of the lease of 1905 and of the instrument of 1906 had not been and was not presented to the court prior to the amendments of the petition allowed pursuant to the court's order of remand and that those amendments presented new and distinct issues. [816]

41.

That the Supreme Court committed error in its final decision of May 3, 1934 in holding and deciding, at least inferentially, that a gift of all income from property for a period comprising the remainder of the life of the owner and/or grantor, is not and would not amount to a gift of a life estate, being a freehold interest in said property.

42.

That the Supreme Court committed error in its final decision in deciding and holding that Eliza Christian was in fact a party lessor in that certain indenture of lease of March 17, 1905.

43.

That the Supreme Court committed error in its final decision herein in not holding and deciding that the lease of 1905 as to the interest of Eliza Christian in the property in question was surrendered in 1910 by the valid and binding act of the lessee and her predecessor life tenant lessor.

44.

That the Supreme Court committed error in its final decision in not holding and deciding that Eliza Christian's assent to the lease of 1905 for no consideration other than a contingent undertaking to pay rentals which were never paid, created no estate in the land and never became effective.

45.

That the Supreme Court committed error in its decision of May 3, 1934 in holding, deciding, and announcing, by way of dictum, that it had committed error in its own prior decision of April 18, 1931 and in the order of remand made pursuant thereto in not reopening the question of mental incompetency [817] with respect to the lease of 1905 and the instrument of 1906.

46.

That the Supreme Court committed error in its decisions of April 18, 1931 and May 3, 1934 in holding and deciding that in an action for cancellation of a single instrument under which property is claimed, the validity of other instruments cannot even be passed upon unless cancellation of them is also prayed for.

47.

That the Supreme Court committed error in its decisions of April 18, 1931 and May 3, 1934 in deciding and holding that the validity of an instrument could not be passed upon in an equitable pro-

ceeding simply because "relief against" the said instrument was not prayed for in said proceeding.

48.

That the Supreme Court committed error in its decisions of April 18, 1931 and May 3, 1934 in not holding and deciding that where restoration to certain properties is prayed for in an action in equity seeking cancellation of an instrument under which said properties are presently claimed, the validity of all other instruments under which respondent may claim an interest in said property is necessarily put in issue.

49.

The Supreme Court committed error in its decision of May 3, 1934 in holding and deciding that the lease of 1905 has been fully performed, when it appears from the record beyond any question that performance under it was ended and voluntarily abandoned by all parties in 1910, and when performance of it with respect to Eliza Christian, petitioner herein, was never even commenced. [818]

50.

The Supreme Court committed error in its decision of May 3, 1934 in deciding and announcing on page 8 of said decision the utterly erroneous doctrine of law that a court of equity cannot and should not grant to a mental incompetent any relief which it could not and would not grant to a person perfectly sane.

51.

That the Supreme Court committed error in its final decision herein in that said decision is inconsistent with itself in that it applies one rule of law to the deed of 1910 and totally different and inconsistent rules of law to the lease of 1905 and the instrument of 1906.

52.

That the Supreme Court committed error in its final decision herein in considering the lease of 1905 as a contract for necessities, on the theory that the consideration supposed to have been received under it could be used as a means for acquiring necessities.

53.

That the Supreme Court committed error in its decision of April 18, 1931 in not specifically finding and holding that Waialua Agricultural Company acted in bad faith in procuring the conveyance of May 2, 1910.

54.

That the Supreme Court committed error in its decisions of April 18, 1931 and May 3, 1934 in not deciding and holding that the bad faith of Waialua Agricultural Company affecting the transaction of May 2, 1910 attached to all parts of that transaction and to the procuring by it of any rights under the [819] instrument of 1906 by virtue of said transaction.

55.

That the Supreme Court committed error in its decision of May 3, 1934 in holding and deciding that Waialua Agricultural Company, Limited by virtue of the deed of May 2, 1910 herein canceled as to Eliza Christian, nevertheless indirectly procured rights against said Eliza Christian through the joinder in said instrument of Annie Kentwell.

56.

That the Supreme Court committed error in its final decision of May 3, 1934 in holding and deciding that by virtue of the instrument of May 2, 1910 Waialua Agricultural Company, became and was a bona fide purchaser for value of rights against the mental incompetent under the provisions of the instrument of August 31, 1906.

57.

That the Supreme Court committed error in its decision of April 18, 1931 and in its final decision herein in holding and deciding that some \$30,000 paid for the conveyance of the Eliza Christian interest under the deed of May 2, 1910 was adequate.

58.

That the Supreme Court committed error in its decisions of 1931 and 1934 and in its final decree entered herein, in holding, deciding and decreeing that Eliza Christian should pay to the Waialua Agricultural Company, Limited the sum of \$30,000, together with interest thereon.

59.

That the Supreme Court committed error in its final decision in said cause in holding and deciding that as a fact [820] in and by virtue of the transaction of May 2, 1910 Waialua Agricultural Company had paid \$30,000 for a contingent interest in remainder to acquire value only after the death of Eliza Christian and of comparatively little present value, and \$5,000 for very much more valuable interest to continue throughout the life of the said Eliza Christian.

60.

That the Supreme Court committed error in its said final decision in holding and deciding in effect that both of the interests referred to in the foregoing assignment were acquired in good faith and for adequate consideration.

61.

That the Supreme Court committed error in its decision of April 18, 1931 and in its final decision in said cause in not holding and deciding that Waialua Agricultural Company, Limited, in and by virtue of the transaction and deed of May 2, 1910, had committed and been guilty of a direct violation of the provisions of Section 55 of the Hawaiian Organic Act providing that "no corporation, domestic or foreign, shall acquire or hold real estate in Hawaii in excess of one thousand acres."

62.

That the Supreme Court committed error in its decisions of 1931 and 1934 in not holding and finding that by virtue of the illegality attaching to the action of Waialua Company in participating in said transaction of May 2, 1910, said Company had been guilty of constructive fraud which attached to and invalidated all parts of said transaction.

63.

That the Supreme Court committed error in its decisions [821] of 1931 and 1934 in not holding and deciding that the deed of May 2, 1910 was illegal and invalid as to Eliza Christian by virtue of said violation of the provisions of the said Hawaiian Organic Act.

64.

That the Supreme Court committed error in its decisions of 1931 and 1934 in not holding and deciding that said instrument of 1910 was invalid and illegal as to Annie Kentwell by virtue of the violation of Waialua Company of the provisions of said Hawaiian Organic Act.

65.

That the Supreme Court committed error in its final decision and decree in failing to order and direct that Waialua Company pay to Eliza Christian reasonable rental for user by said Company prior to the date of the expiration of the lease of 1905 of the properties to be reconveyed to her herein.

66.

That the Supreme Court committed error in its final decision and decree in not ordering and directing the Waialua Company to pay to Eliza Christian rental for the user by said Company subsequent to the date of the expiration of the lease of 1905 of the properties to be reconveyed to her herein.

67.

That the Supreme Court committed error in its final decision and decree in not ordering and directing that the Waialua Company do henceforth pay to Eliza Christian reasonable rental for such use as it may hereafter make of the properties to be reconveyed to her herein. [822]

68.

That the Supreme Court committed error in its final decision and decree in not ordering and directing that the Waialua Company do pay to Eliza Christian interest on rentals as they should have become payable to the said Eliza Christian in the past for the user by said Waialua Company of properties ordered to be reconveyed to her herein from such dates as such rentals would have and should have become due and payable.

69.

That the Supreme Court committed error in its final decision and decree in not ordering and directing the Waialua Company to pay to Eliza Christian all moneys actually received in the past by said

Waialua Agricultural Company for the use and user by third persons of the properties ordered to be reconveyed to her herein.

70.

That the Supreme Court committed error in its final decision in not ordering and directing that Waialua Company do pay to Eliza Christian interest on all moneys received by said Company for the use and user by third persons of the properties ordered to be reconveyed to her herein from the dates upon which said moneys were received by said Waialua Company.

71.

That the Supreme Court committed error in not ordering and directing that the Waialua Company do pay to Eliza Christian the moneys and consideration actually received by said Waialua Company upon the execution by it of that certain lease dated January 10, 1923 between Waialua Agricultural Company, Limited and Hawaiian Pineapple Company, Limited as [823] consideration for the use by said Hawaiian Pineapple Company, Limited of the properties of said Eliza Christian under and pursuant to the terms of said lease.

72.

That the Supreme Court committed error in its final decision in not holding and deciding that upon the affirmance and ratification of said lease to the Hawaiian Pineapple Company, Limited dated January 10, 1923 by Eliza Christian, said Eliza Chris-

tian became entitled to her appropriate and proportionate share of the paid-up rentals received by said Waialua Agricultural Company, Limited upon and as consideration therefor.

73.

That the Supreme Court committed error in its final decision in failing to even consider the fact that the properties herein ordered to be restored to Eliza Christian are restored to her burdened with said lease to the Hawaiian Pineapple Company, Limited of January 10, 1923, and in failing to allow to her any credit at all for the consideration actually received by Waialua Agricultural Company, Limited for the placing of such burden upon her properties as aforesaid.

74.

That the Supreme Court committed error in its final decision and decree in holding and ordering that upon a reconveyance by Waialua Company to Eliza Christian of the properties covered by the deed of 1910, Eliza Christian should execute a conveyance to the Waialua Company of all her right, title and interest in and to the land at or near the southeastern end of the Holt lands which is occupied by the waters of the Wahiawa reservoir when the waters of that reservoir [824] reach the top of the spillway of the Wahiawa dam, together with additional land along the northwestern or Holt side of the Wahiawa reservoir when at its extreme height, of a sufficient width to permit of reasonable

care, maintenance, and use of the reservoir along that side.

75.

That the Supreme Court committed error in its final decision in ordering and directing that upon performance of the final decree herein, Eliza Christian convey to the Waialua Company all of that certain portion of Grant 235 which is occupied by the Poamoho pump and its accessories and as much more as may be reasonably necessary for the convenient and effective care, maintenance, and use of that pump and its accessories.

76.

That the Supreme Court committed error in its final decision and decree in holding and ordering that upon performance of said decree Eliza Christian convey to the Waialua Company all of those portions of the Holt lands which are occupied by reservoirs, dams, and camps constructed by the Waialua Company, and as much additional land adjoining each of said reservoir (including dams) and camps on all sides thereof as is reasonably necessary for the convenient and effective care, maintenance and use thereof.

77.

That the Supreme Court committed error in its final decision and decree in holding and ordering that upon performance of said decree, Eliza Christian do convey to Waialua Agricultural Company

all portions of the Holt lands upon which the Waialua Company has constructed and maintained pumps and [825] their accessories, and as much land wholly around each of said pumps and accessories as is reasonably necessary for the convenient and effective care, maintenance and use of said pumps.

78.

That the Supreme Court committed error in its final decision and decree in deciding and ordering that upon the performance of said decree Eliza Christian do grant to the Waialua Company, by good and sufficient written instrument, permanent rights of way for all ditches, flumes, syphons, pipe lines, railroads, roads, electric power lines, telephone lines, and other utilities, if any, which have been constructed and are being maintained by the Waialua Company on the Holt lands, or any part thereof, together with such additional land on each side of each such ditch, flume, syphon, pipe line, railroad, road, electric power line, telephone line, and other utility above referred to, of such width as may be reasonably necessary for the convenient and effective care, maintenance, and use of each such utility.

79.

That the Supreme Court committed error in its decision of April 18, 1931 in holding and deciding that the decree of the trial judge entered October 16, 1929 should be reversed so far as it required the payment of the sum of \$540,906.07 by Waialua Company to the guardian of Eliza R. P. Christian.

80.

That the Supreme Court committed error in its decision of April 18, 1931 in not holding and deciding that the decree of the trial judge dated October 16, 1929 should be then affirmed in its entirety, and in not thereupon entering its [826] final decree in said cause to that effect.

81.

That the Supreme Court committed error in its decision of April 18, 1931 in holding and deciding that the question of the validity as to Eliza Christian of the lease of March 17, 1905 had not theretofore been in issue in the case.

82.

That the Supreme Court committed error in its decision of April 18, 1931 in deciding and holding that merely because cancellation of the lease of March 17, 1905 had not theretofore been prayed for, the question of its validity or invalidity could not be passed upon.

83.

That the Supreme Court committed error in its decision of April 18, 1931 in not holding and deciding that the trial court had properly found the lease of March 17, 1905 to have been invalid and of no effect as to Eliza Christian.

84.

That the Supreme Court committed error in its decision of April 18, 1931 and in its order of remand

issued pursuant thereto in holding and decreeing that the cause be remanded to the trial court for a re-examination a second time by that court of the question of the validity as to Eliza Christian of the lease of March 17, 1905.

85.

That the Supreme Court committed error in its decision of April 18, 1931 in holding and deciding that the question of the validity as to Eliza Christian of the instrument of August 31, 1906 had not theretofore been in issue in the case. [827]

86.

That the Supreme Court committed error in its decision of April 18, 1931 in deciding and holding that merely because cancellation of the instrument of August 31, 1906 had not theretofore been prayed for, the question of its validity or invalidity could not be passed upon.

87.

That the Supreme Court committed error in its decision of April 18, 1931 in not holding and deciding that the trial court had properly found the instrument of August 31, 1906 to have been invalid and of no effect as to Eliza Christian.

88.

That the Supreme Court committed error in its decision of April 18, 1931 and in its order of remand issued pursuant thereto in holding and decreeing that the cause be remanded to the trial court

for a re-examination a second time by that court of the question of the validity as to Eliza Christian of the instrument of August 31, 1906.

89.

That the Supreme Court committed error in its order and decree of remand dated May 21, 1931 in setting aside the decree of the Honorable A. M. Cristy dated October 16, 1929.

90.

That the Supreme Court committed error in its said order and decree dated May 21, 1931 in not then ordering and decreeing that the decree of the Honorable A. M. Cristy dated October 16, 1929 be affirmed and enforced without any modification or amendment thereto.

91.

That the Supreme Court committed error in its decree [828] of May 21, 1931 in ordering and decreeing that said cause be remanded to the Circuit Court judge for further proceedings as therein outlined before a final decree giving to petitioner complete relief could be entered in said cause.

92.

That the Supreme Court committed error in its decision of May 3, 1934 in holding and deciding by way of dictum that respondent Waialua Agricultural Company, Limited, in the proceedings had pursuant to the said order of remand, should have been permitted to reopen the question of mental

competency and present evidence bearing on the question of mental competency with respect to the lease of 1905 and the instrument of 1906.

93.

That the Supreme Court committed error in its decision of May 3, 1934 in holding and deciding by way of dictum that it, said Supreme Court, had itself committed error in its prior decision of April 18, 1931 in there deciding that the question of mental competency should not be reopened in the proceedings to be had on remand.

94.

That the Supreme Court of Hawaii committed error in its decision of May 3, 1934 in holding and finding that error had been involved in the following by the trial court of instructions given it by the Supreme Court after said instructions had been fully complied with.

95.

That the Supreme Court committed error in its decision of May 3, 1934 and in its prior decision of April 18, 1931 in holding and deciding that "neither the lease of 1905 nor the indenture of 1906 was a subject of contention between the [829] parties at the original trial."

96.

That the Supreme Court committed error in its decisions of 1931 and 1934 in holding and deciding in effect that in an action for the cancellation of an instrument under which a sole claim of right

is being urged, there can be no determination as to the validity or invalidity of any other instrument unless a prayer for its cancellation is also made.

97.

That the Supreme Court committed error in its decision of April 18, 1931 in holding and deciding that the consideration paid for the deed of May 2, 1910 was adequate.

98.

That the Supreme Court committed error in its decision of April 18, 1931 in not holding and deciding that the consideration paid for the deed of 1910 was grossly inadequate.

99.

That the Supreme Court committed error in its decisions of 1931 and 1934 in not holding and deciding that the deed of 1910 was wholly invalid and of no effect as to Eliza Christian, not only as to rights claimed to have been acquired against her by virtue of her own joinder in said instrument, but also as to rights claimed to have been acquired against her indirectly through the joinder therein of Annie Kentwell.

100.

That the Supreme Court committed error in its decisions of 1931 and 1934 in not holding and deciding that Waialua Company could not and did not acquire the status of bona fide purchaser for value of any rights as against Eliza Christian by virtue

of the execution by any party of the deed of 1910. [830]

101.

That the Supreme Court committed error in its decisions of 1931 and 1934 in not holding and deciding that Waialua's lack of good faith tainted and affected the transaction of May 2, 1910 in all its parts, and deprived said Waialua Company of the status of a purchaser in good faith of any rights against Eliza Christian under or by virtue of the instrument of 1906.

102.

That the Supreme Court committed error in its decisions of 1931 and 1934 in not holding and deciding that it was not intended by the parties to the deed of May 2, 1910 to thereby effect a transfer to Waialua of rights under the instrument of 1906 and that in equity no such transfer was accomplished.

103.

That the Supreme Court committed error in its decisions of 1931 and 1934 in holding and deciding that in equity Annie Kentwell, through the execution of the deed of 1910, transferred and conveyed to the Waialua Company rights held by her against Eliza Christian under and by virtue of the instrument of 1906.

104.

That the Supreme Court committed error in its decisions of 1931 and 1934 in not holding and deciding that the Waialua Company paid no considera-

tion at all for any rights under the instrument of 1906.

105.

That the Supreme Court committed error in its decisions of 1931 and 1934 in deciding that the Waialua Company was a purchaser for value of rights against Eliza Christian under the instrument of 1906. [831]

106.

That the Supreme Court committed error in its decisions of 1931 and 1934 in not holding that any consideration claimed to have been paid by Waialua for rights under the instrument of 1906 was grossly inadequate.

107.

That the Supreme Court committed error in its decisions of 1931 and 1934 in not holding that the instrument of 1906 was not even considered or thought of by the parties in the consummation and effecting of the transaction of May 2, 1910 and that in equity it should not be considered as having been involved in or affected thereby.

108.

That the Supreme Court of the Territory of Hawaii committed error in making and entering its final decree in the above entitled matter on, to-wit: March 25, 1935, for all of the reasons hereinabove recited as indicating error committed in the prior decisions and order of the said Court hereinabove more specifically referred to, to the extent that said

errors involved in said prior decisions and order are reflected in said final decree.

109.

That the Supreme Court committed error in its final decree made and entered herein on March 25, 1935 in reversing and setting aside the decree of the Honorable A. M. Cristy dated September 6, 1932.

110.

That the Supreme Court committed error in Paragraph III of its final decree dated March 25, 1935 in excepting and reserving from the lands ordered to be restored to Eliza R. P. [832] Christian upon cancellation as to her of that certain deed dated May 2, 1910, the real properties, easements and other interests referred to in said Paragraph III, and further described in Paragraph IV of said decree.

111.

That the Supreme Court committed error in attempting in its said final decree of March 25, 1935 to partially effect in these proceedings a partition of rights and interests with respect to the properties in question as between the parties hereto.

112.

That the Supreme Court committed error in said final decree of March 25, 1935 in requiring that Eliza R. P. Christian join in the instrument and deed referred to in Paragraph III of said decree.

113.

That the Supreme Court committed error in making and entering its final decree of March 25, 1935 and in providing in Paragraph V of said decree that Eliza R. P. Christian is not entitled to any award of rents or damages in this suit.

114.

That the Supreme Court committed error in making and entering its final decree of March 25, 1935 in not decreeing that Eliza R. P. Christian is entitled in this action to an award for rents or other compensation for the use of her properties restored to her herein.

115.

That the Supreme Court committed error in its said final decree of March 25, 1935 in not awarding to Eliza R. P. Christian rents or damages for the use of the property restored [833] to her herein just as it does in said same decree award to Waialua Agricultural Company, Limited interest for the use of the moneys restored to it herein.

116.

That the Supreme Court committed error in its first and final decision in not holding and finding that the trial court should have considered evidence of profits made by Waialua Agricultural Company, Limited in its management of the land.

117.

That the Supreme Court committed error in its decree of March 25, 1935 in holding by the provisions of Paragraph VI of said decree that that certain lease dated March 17, 1905 between Carlos A. Long et al and Waialua Agricultural Company, Limited et al, is in all respects valid, and that Eliza R. P. Christian is not entitled to have said lease canceled.

118.

That the Supreme Court committed error in its said final decree of March 25, 1935 in failing to cancel that certain lease dated March 17, 1905, and referred to in Paragraph VI of said decree, for the same reasons that in said same decree it did cancel the deed of May 2, 1910.

119.

That the Supreme Court committed error in its said decree of March 25, 1935 in holding said lease of March 17, 1905 to be valid, and then in failing and refusing to grant to Eliza R. P. Christian the rights, and particularly the rights of all improvements on said property on the termination of said lease, which rights would have belonged to her if said lease had been valid. [834]

120.

That the Supreme Court committed error in its final decree of March 25, 1935 in awarding to the Waialua Agricultural Company, Limited a certain large area of the common lands as incidental to the conveyance to Waialua Agricultural Company, Lim-

ited of certain improvements, without in any way providing for a securing to Eliza R. P. Christian of an appropriate corresponding area of acreage of said common lands.

121.

That the Supreme Court committed error in its said final decree of March 25, 1935 in providing in Paragraph VII of said decree that that certain instrument dated August 31, 1906 by and between Eliza R. P. Christian and Annie Holt Kentwell is in all respects valid as an assignment of rents, issues and profits from the land, and that said Eliza R. P. Christian is not entitled to have said instrument canceled.

122.

That the Supreme Court committed error in its decree of March 25, 1935 in failing therein to order and direct that said instrument of August 31, 1906, referred to in Paragraph VII of said decree, be canceled and set aside.

123.

That the Supreme Court committed error in its said decree of March 25, 1935 in failing to hold said instrument of August 31, 1906, referred to in Paragraph VII of said decree, to be wholly and completely void.

124.

That the Supreme Court committed error in its said decree of March 25, 1935 in providing in the provisions of Paragraph VIII of said decree that by virtue of the instrument [835] of August 31,

1906 Waialua Agricultural Company, Limited acquired all rents, issues and profits from the land therein referred to which have accrued or will accrue to Eliza R. P. Christian from any source from August 31, 1906 until the end of the natural life of her, the said Eliza R. P. Christian.

125.

That the Supreme Court committed error in its said final decree of March 25, 1935 in providing in Paragraph VIII of said decree in substance and effect that Waialua Agricultural Company, Limited should have a life estate in said properties for the life of Eliza R. P. Christian by virtue of the instrument of August 31, 1906, while in its decision of May 3, 1934, (and in fact in Paragraph VII of said decree itself) the said Court decreed that Waialua Agricultural Company, Limited had no life estate in said lands, and that the said instrument of 1906 conveyed and could convey no life estate.

126.

That the Supreme Court committed error in its said decree of March 25, 1935 in failing to therein order and provide that the decree of the Honorable A. M. Cristy dated September 6, 1932, herein appealed from, be in all respects affirmed.

127.

That the Supreme Court committed error in its decree of March 25, 1935 in failing therein to provide for the payment to Eliza R. P. Christian by Waialua Agricultural Company, Limited of the sum of \$606,785.75, or of any sum at all. [836]

WHEREFORE IT IS PRAYED that said decree of March 25, 1935 may be reversed, and that the decree of the Honorable A. M. Cristy dated September 6, 1932 be affirmed and reinstated and/or that appellant may have such other and further relief as may be appropriated.

Dated: Honolulu, T. H., April 18th, 1935.

ELIZA R. P. CHRISTIAN,

An incompetent person,

By HERMAN V. VON HOLT,

Her Guardian,

Petitioner-Appellee,

By BARRY S. ULRICH,

By CHARLES M. HITE,

Her Attorneys. [837]

[Title of Court and Cause.]

NOTICE.

Filed April 18, 1935 at 1:51 o'clock p. m. (s) Robert Parker, Jr., Clerk Supreme Court. [838]

To: Waialua Agricultural Company, Limited and Herman Phleger, Esquire and Messrs. Robertson & Castle, its attorneys; James E. Holt and John R. Desha, Esquire, his attorney; and Annie Holt Kentwell, and John R. Desha, Esquire, her attorney:

YOU AND EACH OF YOU will please take notice that petitioner above named proposes presenting to the Honorable James J. Banks, Justice of the Supreme Court of the Territory of Hawaii, in his Chambers in the Judiciary Building, Hon-

olulu, T. H., on Monday, April 22, 1935, at the hour of 10:00 o'clock a. m., a petition for the allowance of an appeal from the decree of the Supreme Court of the Territory of Hawaii in the above entitled matter made and entered and filed in said cause on, to-wit, March 25, 1935.

Dated: Honolulu, T. H., April 18th, 1935.

ELIZA R. P. CHRISTIAN,

An incompetent person,

By HERMAN V. VON HOLT,

Her Guardian,

Petitioner-Appellee,

By HARRY S. ULRICH and

CHAS. M. HITE,

By (s) CHAS. M. HITE,

Her Attorneys. [839]

Receipt of a copy of the foregoing Notice, copy of proposed Petition for Appeal with affidavit, and copy of Assignment of Errors admitted this 18th day of April, 1935.

WAIALUA AGRICULTURAL
COMPANY, LTD.,

By HERMAN PHLEGER and

ROBERTSON & CASTLE

By (s) ALFRED L. CASTLE,

Its Attorneys.

JAMES L. HOLT,

By (s) JOHN R. DESHA,

His Attorney.

ANNIE HOLT KENTWELL,

By (s) JOHN R. DESHA,

Her Attorney. [840]

[Title of Court and Cause.]

**ORDER ALLOWING APPEAL AND FIXING
AMOUNT OF BOND.**

Filed April 23, 1935 at 11:00 o'clock a. m. Gus
K. Sproat, Deputy Clerk Supreme Court. [841]

Upon reading and filing the verified petition of
Eliza R. P. Christian, an incompetent person, by
Herman V. von Holt, her guardian, for an appeal
to the United States Circuit Court of Appeals for
the Ninth Circuit, and upon consideration of the
assignment of errors presented and filed therewith:

IT IS ORDERED that the said appeal from the
final decree of this Court, entered herein on, to-wit:
the 25th day of March, 1935, to the United States
Circuit Court of Appeals for the Ninth Circuit be
and said appeal is hereby allowed.

And said petitioner is hereby ordered to file with
the Clerk of this Court, within thirty (30) days
from the date hereof, an approved bond in the sum
of Five Thousand Dollars (\$5,000.00) conditioned
that she will prosecute said appeal to conclusion
and effect and answer all damages and costs if she
fail to make good on her said plea and appeal.

Dated at Honolulu, T. H., this 23rd day of April,
A. D. 1935.

[Seal]

JAS. J. BANKS,
Justice Supreme Court of the Territory
of Hawaii. [842]

Service of a copy of the foregoing Order Allowing Appeal and Fixing Amount of Bond is hereby admitted this 23rd day of April, 1935.

ROBERTSON & CASTLE,

By J. G. ANTHONY,

Attorneys for Waialua Agricultural Company, Limited.

JOHN R. DESHA,

Attorney for James L. Holt.

.....
Attorney for Annie Holt Kentwell. [843]

[Title of Court and Cause.]

BOND ON APPEAL.

Filed April 24, 1935 at 9:25 o'clock a. m. (s) Robert Parker, Jr., Clerk Supreme Court. [844]

KNOW ALL MEN BY THESE PRESENTS, that ELIZA R. P. CHRISTIAN, an incompetent person, by Herman V. von Holt, her guardian, as Principal, and UNITED STATES FIDELITY & GUARANTY COMPANY, as Surety, are held and firmly bound unto WAIALUA AGRICULTURAL CO., LTD., an Hawaiian corporation, JAMES L. HOLT, and ANNIE HOLT KENTWELL, in the penal sum of Five Thousand Dollars (\$5,000.00), for the payment of which, well and truly to be made, to the said Waialua Agricultural Co., Ltd., an Hawaiian corporation, James L. Holt, and Annie Holt

Kentwell, the said Eliza R. P. Christian, an incompetent person, by Herman V. von Holt, her guardian, as Surety, by these presents do bind themselves, their respective successors and heirs, executors, and assigns jointly and severally and firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

WHEREAS, on the 18th day of April, 1935, the above bounden principal filed her petition for an appeal to the United States [845] Circuit Court of Appeals for the Ninth Circuit from the decisions and decree made and entered in the above entitled cause by the Supreme Court of the Territory of Hawaii;

NOW, THEREFORE, if the said principal shall prosecute her appeal with effect, and answer all damages and costs which may be hereinafter taxed either in the Supreme Court of the Territory of Hawaii or in the Ninth Circuit Court of Appeals or in both of said Courts if she fails to sustain said appeal, then this obligation shall be void; otherwise it shall remain in full force and effect.

IN WITNESS WHEREOF the said ELIZA R. P. CHRISTIAN, an incompetent person, by Herman V. von Holt, her guardian, has set her hand and seal, and the said UNITED STATES FIDELITY & GUARANTY COMPANY, as surety, has caused its name to be signed and its corporate seal

to be attached by its own proper officers thereunto duly authorized, this the 23rd day of April, 1935.

ELIZA R. P. CHRISTIAN,

An incompetent person,

By (s) HERMAN V. VON HOLT,
Her Guardian,
Principal.

UNITED STATES FIDELITY
AND GUARANTY COMPANY,

[Seal] By (s) HERMAN LUIS,
Its Attorney-in-Fact,
Surety.

Approved as to form, amount, and sufficiency of surety:

(s) JAS. J. BANKS,
Justice Supreme Court of the Ter-
ritory of Hawaii. [846]

[Title of Court and Cause.]

CITATION.

Filed April 26, 1935 at 10:05 o'clock a. m. Robert Parker, Jr., Clerk Supreme Court. [847]

The United States of America.—ss.

The President of the United States of America, to:
Waialua Agricultural Company, Limited, an
Hawaiian corporation, James L. Holt and
Annie Holt Kentwell, Greeting:

You and each of you, are hereby cited and ad-
monished to be and appear before the United States

Circuit Court of Appeals for the Ninth Circuit, in the City of San Francisco, State of California, within thirty days from the date of this Writ, pursuant to an appeal duly allowed by the Supreme Court of the Territory of Hawaii and filed in the Clerk's office of said Court on the 23rd day of April, 1935, in the said cause, wherein ELIZA R. P. CHRISTIAN, an incompetent person, by HERMAN V. VON HOLT, her guardian, is and was appellant, and you are appellees, to show cause, if any cause you can show, why the final decree made and entered by the said Supreme Court of the Territory of Hawaii on, to-wit: the 25th day of March, 1935, should not be [848] corrected as indicated in said petition for appeal and assignment of errors filed therewith and why speedy justice should not be done to the parties on that behalf.

WITNESS the hand and seal of the Honorable CHARLES EVANS HUGHES, Chief Justice of the Supreme Court of the United States of America, this 26th day of April, in the year of our Lord, One Thousand Nine Hundred and Thirty-five.

JAS. J. BANKS,

Justice Supreme Court of the Territory of Hawaii.

Attest:

[Seal]

ROBERT PARKER, JR.,

Clerk Supreme Court of the Territory of Hawaii.

Service of the within Citation and receipt of a copy is hereby admitted this 26th day of April, 1935.

ROBERTSON & CASTLE,

By J. G. ANTHONY,

Attorneys for Waialua Agricultural Company, Limited.

JOHN R. DESHA,

Attorney for James L. Holt.

BARRY S. ULRICH,

Attorney for Annie Holt Kentwell. [849]

[Title of Court and Cause.]

CONSENT TO APPEARFANCE OF
COUNSEL.

Filed April 26, 1935 at 2:45 o'clock p. m. (s) Robert Parker, Jr., Clerk Supreme Court. [850]

Comes now ELIZA R. P. CHRISTIAN, an incompetent person, by Herman V. Von Holt, her Guardian, petitioner herein, and consents and agrees that Barry S. Ulrich, heretofore and now appearing and acting as her attorney in the above-entitled matter, may also appear and act in said matter as attorney for Annie Holt Kentwell, respondent above-named, notwithstanding any adversity of interest which may or might exist as between said Eliza R. P. Christian and said Annie Holt Kentwell.

Dated at Honolulu, Hawaii, this 26th day of April, 1935.

ELIZA R. P. CHRISTIAN,
an incompetent person,
By (s) HERMAN V. VON HOLT,
Her Guardian,
Petitioner-Appellee. [851]

[Title of Court and Cause.]

MOTION FOR LEAVE TO APPEAR AS
COUNSEL.

Filed May 1, 1935 at 10:23 o'clock a. m. (s) Gus K. Sproat, Deputy Clerk Supreme Court. [852]

Comes now JOHN R. DESHA, attorney at law of Honolulu, and moves this Honorable Court that he be permitted to enter his name and appear as attorney of record in the above-entitled cause for ANNIE HOLT KENTWELL.

Your movant shows to this Court that he is an attorney at law duly authorized to practice in all of the courts of this Territory and that he has his authority and employment to appear and act for the said Annie Holt Kentwell as attorney in the above-entitled matter through one, Barry S. Ulrich, attorney at law of Honolulu, as indicated by the letter of Barry S. Ulrich of even date herewith, addressed to your movant, together with radio-grams passing between said Barry S. Ulrich and the said Annie Holt Kentwell of 159 Woodstock

Road, Oxford, England, all of which are hereto attached and made a part hereof.

Dated at Honolulu, T. H. this 1st day of May, A. D. 1935.

(s) JOHN R. DESHA

• Territory of Hawaii,
City and County of Honolulu.—ss.

JOHN R. DESHA, being first duly sworn, on oath deposes and says: That he is the movant in the foregoing motion; that he has read said motion and knows the contents [853] thereof and that the allegations therein contained are true.

(s) JOHN R. DESHA

Subscribed and sworn to before me this 1st day of May, 1925.

[Notarial Seal] (s) THOMAS B. KAMIOKA,
Notary Public First Judicial Circuit, Territory of
Hawaii.

(COPY)

Cable and Wireless Address

"Ulbar"

Honolulu

BARRY S. ULRICH

Attorney at Law

Dillingham Building

Honolulu, Hawaii

April 30, 1935.

John R. Desha, Esq.

Attorney at Law

Honolulu, Hawaii

Dear Sir:

Confirming my oral conversation with you and pursuant to the authority indicated by the inclosed radiograms, I herewith employ and authorize you to appear and act as attorney for Annie Holt Kentwell in the Supreme Court of the Territory of Hawaii and in the United States Circuit Court of Appeals for the Ninth Judicial Circuit on appeal, in the matter of "Eliza R. P. Christian, an incompetent person, by Herman V. Von Holt, her Guardian, Petitioner-Appellee, vs. Waialua Agricultural Company, Limited, an Hawaiian corporation, James L. Holt and Annie Holt Kentwell, Respondents-Appellants".

In explanation of the cable to me from Mrs. Kentwell, I may say that "Ulbar" is my cable address in Honolulu.

Very truly yours,

(s) BARRY S. ULRICH

BSU:H

Inc 2 [854]

RADIOGRAM.

(April 23, 1935)

(2:35 P. M.)

Annie Kentwell
159 Woodstock Road
Oxford England

Waialua appeal being perfected stop to avoid
delay please cable me at once authority to employ
counsel to act for you on appeal wire collect

ULRICH

Sender's Name and Address

(Not to be Transmitted)

Barry S. Ulrich,

317 Dillingham Bldg., Honolulu. [855]

RADIOGRAM.

Received at 125 So. King St., Honolulu, at 1935

Apr 27 pm 1 12

816 London 28 27 NFT

NLT Ulbar Honolulu

Authorize you employ counsel stop urgent von
Holt cable requested funds Christians further treat-
ment Drortwich duCampbell against travelling
France because imbecility bars return England
reply

KENTWELL [856]

[Title of Court and Cause.]

ORDER.

Filed May 1, 1935 at 3:15 o'clock p. m. (s) Gus K. Sproat, Deputy Clerk Supreme Court. [857]

Upon motion duly made and presented to this Court by John R. Desha, an attorney-at-law and a member of the Bar of this Court, that he be permitted to appear and act as attorney and counsel for Annie Holt Kentwell, respondent in the above-entitled cause, and just cause appearing therefor;

IT IS HEREBY ORDERED, AND IT IS THE ORDER OF THIS COURT, that said motion be granted and the said John R. Desha be and he hereby is authorized and permitted to appear and act in the above entitled cause as counsel of record for Annie Holt Kentwell, respondent above-named.

Dated at Honolulu, Hawaii, May 1, 1935.

BY THE COURT:

[Seal]

(s) GUS K. SPROAT,

Deputy Clerk, Supreme Court.

Approved:

(s) JAS. J. BANKS,

Associate Justice. [858]

[Title of Court and Cause.]

ACKNOWLEDGMENT OF SERVICE OF
CITATION.

Filed May 9, 1935 at 9:30 o'clock a. m. (s) Robert
Parker, Jr., Clerk Supreme Court. [859]

Comes now ANNIE HOLT KENTWELL, re-
spondent-appellant in the above entitled Court and
cause, by her attorney, John R. Desha, and acknowl-
edges service of the citation on appeal issued April
26, 1935 pursuant to the Order allowing appeal of
petitioner-appellee above named dated April 23,
1935.

Dated: Honolulu, T. H., May 9, 1935.

ANNIE HOLT KENTWELL,

Respondent-Appellant,

By (s) JOHN R. DESHA,

Her Attorney. [860]

[Title of Court and Cause.]

PETITION FOR APPEAL.

Filed June 5, 1935 at 11:20 o'clock a. m. Robert
Parker, Jr., Clerk Supreme Court. [861]

To the Honorable Acting Chief Justice and Asso-
ciate Justices of the Supreme Court of the
Territory of Hawaii:

Comes now WAIALUA AGRICULTURAL
COMPANY, LIMITED, one of the respondents-
appellants above named, by its attorneys, Robertson
& Castle, deeming itself aggrieved by the decision

and decree of the above entitled Court in the above entitled cause, which final decree of the Supreme Court of the Territory of Hawaii was made and entered on the 25th day of March, 1935, pursuant to the opinion of the Court rendered May 3, 1934, and claiming that there are manifest and material errors to the damage of said Waialua Agricultural Company, Limited, in said cause, which errors are specifically set forth in the assignment of errors filed herewith, to which reference is hereby made, and respectfully prays that an appeal may be allowed it in the above entitled [862] cause and that it be allowed to prosecute said appeal to the United States Circuit of Appeals for the Ninth Circuit in accordance with the statutes in such cases made and provided; that an order be made fixing the amount of security that Waialua Agricultural Company, Limited, respondent-appellant shall give, and that the Clerk of the Supreme Court of the Territory of Hawaii be directed to send to the United States Circuit Court of Appeals for the Ninth Circuit a transcript of the record, proceedings and papers in this cause, duly authenticated, for the correction of the errors so complained of, and that a citation may issue.

And in this behalf Waialua Agricultural Company, Limited, respondent-appellant, shows that the said decree was rendered in an appeal in the above entitled Court and cause and that the value of the land in controversy, the subject matter of said cause, exclusive of interest and costs, exceeds \$5,000; and

further that James L. Coke, Chief Justice of the Supreme Court of the Territory of Hawaii, is disqualified from acting in said cause and that the Honorable James J. Banks is the Senior Associate Justice of the Supreme Court of the Territory of Hawaii.

Dated: Honolulu, T. H., June 4th, 1935.

ROBERTSON & CASTLE,
By **J. G. ANTHONY** and
BROBECK, PHLEGER &
HARRISON,

Attorneys for Waialua Agricultural Company, Limited,
Appellant. [863]

Territory of Hawaii,
City and County of Honolulu—ss.

J. G. Anthony, being first duly sworn, under oath deposes and says that he is a member of the law firm of Robertson & Castle, attorneys for WAIALUA AGRICULTURAL COMPANY, LIMITED, one of the respondents-appellants in the above entitled cause, and as such has authority to make oath on behalf of said respondent-appellant; that he has read the foregoing Petition for Appeal, knows the contents thereof and that the matters and things therein set forth are true of his own knowledge, and that the value in controversy, exclusive of interest and costs, exceeds \$5,000.

J. G. ANTHONY

Subscribed and sworn to before me this 4th day
of June, 1935.

[Seal] CHARLES Y. AWANA,
Notary Public, First Judicial Circuit, Territory of
Hawaii.

Service of a copy of the foregoing Petition for
Appeal, and Assignment of Errors hereto attached,
is hereby admitted this 4th day of June, 1935.

ELIZA R. P. CHRISTIAN,

An incompetent person,

Petitioner-Appellee,

By BARRY S. ULRICH and

CHAS. M. HITE,

Her Attorneys.

JAMES L. HOLT,

Respondent-Appellant,

By JOHN R. DESHA,

His Attorney.

ANNIE HOLT KENTWELL,

Respondent-Appellant,

By JOHN R. DESHA,

Her Attorney. [864]

[Title of Court and Cause.]

ASSIGNMENT OF ERRORS.

Filed June 5, 1935 at 11:20 o'clock a. m. Robert Parker, Jr., Clerk Supreme Court. [865]

Comes now WAIALUA AGRICULTURAL COMPANY, LIMITED, appellant in the above entitled cause, by Robertson & Castle, and Brobeck, Phleger & Harrison, its attorneys, and says that there is manifest error in the record, proceedings and opinions in the above entitled cause in the Supreme Court of the Territory of Hawaii and in the final decree rendered by said Court in said cause on March 25, 1935, to the prejudice of said appellant in this, to-wit:

1.

The Supreme Court of the Territory of Hawaii (hereinafter referred to as "the Court") erred in making said decree.

2.

The Court erred in not making a decree reversing in its entirety the decree of the trial court dated September 6, 1932. [866]

3.

The Court erred in not making a decree dismissing the bill with costs to appellant.

4.

The Court erred in ordering, adjudging and decreeing that certain deed dated May 2, 1910, by

and between John Dominis Holt, Eliza R. P. Christian, Annie Holt Kentwell and Lawrence K. Kentwell, Grantors, to James L. Holt, Grantee, Exhibit A-21, (hereinafter referred to as the deed of 1910), is cancelled, annulled and void, and of no effect as to Eliza R. P. Christian, grantee therein.

5.

The Court erred in ordering and decreeing that appellant quitclaim and reconvey to Eliza R. P. Christian upon the terms and conditions set forth in its decree, the property and interest in said premises which the appellant acquired from Eliza R. P. Christian under and by virtue of the deed of 1910.

6.

The Court erred in ordering and decreeing that appellant quitclaim and reconvey to Eliza R. P. Christian an undivided one-third interest in fee simple unencumbered in and to the premises described in the deed of 1910 because the interest which Eliza R. P. Christian conveyed to the appellant by said deed was only a contingent remainder in an undivided one-third interest in said premises. [867]

7.

The Court erred in finding that Eliza R. P. Christian on May 2, 1910, the date of the execution of the deed of 1910, was a congenital imbecile.

8.

The Court erred in holding that Eliza R. P. Christian was a congenital imbecile, for the reason

that said finding is contrary to the weight of the evidence.

9.

The Court erred in cancelling the deed of 1910 as to Eliza R. P. Christian upon the ground of the alleged incompetency of Eliza R. P. Christian, for the reason that the evidence failed to show that Eliza R. P. Christian was incompetent and there was no clear and convincing proof of the fact of incompetency such as is required by law.

10.

The Court erred in giving no weight to the fact that no guardianship proceedings were brought with respect to Eliza R. P. Christian for more than sixteen years after the execution of the deed in question.

11.

The Court error in holding that the testimony of an attorney whose integrity was and is undisputed, who visited Eliza R. P. Christian in 1912 for the express purpose of exercising an option on her property, and who saw her on five separate occasions; and that of two attorneys and notaries who saw petitioner in 1907 and took her acknowledgments to deeds; is merely the testimony of "casual" and/or "superficial" observers, and in giving no weight to such testimony. [868]

12.

The Court erred in giving no weight to the fact of actual participation of Eliza R. P. Christian in

business transactions, transfers and conveyances and the acceptance of such transactions, transfers and conveyances by the public and public officials, and in not holding that the fact of such participation in business transactions controls mere opinion evidence.

13.

The Court erred in giving no weight to the fact that the family and closest relations of Eliza R. P. Christian dealt with her as a competent person.

14.

The Court erred in giving no weight to the fact that the members of the family of Eliza R. P. Christian—her father, her husband, and her two most intimate relatives—joined with her in the execution of the deed of 1910, and treated her as fully competent to execute said deed.

15.

The Court erred in finding that the letters from Eliza R. P. Christian to James L. Holt (Exhibits 1-B, 1-C and 1-D) were not written by her and in holding, "there is no evidence * * * from which even an inference can be drawn that these letters were the product of Eliza's brain or her hand." (31 Hawaii 817, 868.)

16.

On motion of appellant an open commission to take the deposition of Dr. J. C. Masson of the Mayo Clinic was [869] regularly issued out of the Circuit

Court. Dr. Masson testified that he was the hospital physician of the Manhattan Maternity Hospital in New York in 1909; that he had attended Eliza R. P. Christian, who was a patient at the hospital, as a maternity case; that he observed her daily from January 1, 1909, to January 21, 1909; that from his observation she was a normal person and that had there been anything abnormal in her mentality it would have been observed by him and noted on the hospital chart; that it was his duty to make such notations on the chart and also the duty of the nurse in charge to make such notations. The hospital chart was offered in evidence, attached to the deposition of Dr. J. C. Masson, marked Exhibits 2, 3, 4, 5 and 6. Said exhibits were identified by the witness as true copies of the originals, Exhibits 2, 3 and 4 being in the witness' own handwriting.

When the deposition of Dr. J. C. Mason was offered in evidence, together with the exhibit thereto attached, the trial court upon the objection of appellee excluded Exhibits 2, 3, 4, 5 and 6 from evidence. Said exhibits disclose a careful detailed recorded observation of the condition of Eliza R. P. Christian for a period of three weeks, including hourly observations by the attendant nurse; that said exhibits further disclose Eliza R. P. Christian correctly gave her name, place of birth, age and address, and was a normal person; that in no place in said exhibits was there any indication of any abnormality during the entire period Eliza R. P. Christian was under observation; that Eliza R. P.

Christian gave birth to a normal child and on January 21, 1909, both she and her child were discharged and their condition noted on the chart as "good"; that the Court erred in failing to reverse [870] the ruling of the trial court excluding the hospital chart, attached to said deposition, being Exhibits 2, 3, 4, 5 and 6.

17.

The Court erred in cancelling the deed of 1910 because appellant cannot be restored to status quo.

18.

The Court having found that appellant purchased the contingent interest of Eliza R. P. Christian in the premises by mesne conveyance, in good faith and without knowledge or notice of the alleged fact of incompetency, and having further found that appellant paid a fair and adequate consideration therefor, erred in failing to enter its decree in favor of appellant dismissing the bill.

19.

The Court, having found as a fact that appellant was a purchaser of Eliza R. P. Christian's contingent interest in the premises in dispute under the deed of 1910, in good faith and without knowledge or notice of the alleged fact of incompetency, and for a fair and adequate consideration, erred in failing to hold that said deed should not be cancelled after the contingency vested, and in failing to enter its decree in favor of appellant dismissing the bill.

20.

The Court erred in holding that status quo can be restored when in fact it cannot because when Eliza R. P. Christian made said deed of 1910, she had only a contingent [871] estate, but now the same has vested, and a contingent estate can no longer be conveyed.

21.

The Court erred in failing to hold that status quo could not be restored by cancelling the deed of 1910 as to Eliza R. P. Christian, and in not entering a decree in favor of appellant dismissing the bill.

22.

The Court erred in failing to hold that status quo could not be restored by requiring appellant to convey to Eliza R. P. Christian an undivided one-third interest in the premises, and in not entering a decree in favor of appellant dismissing the bill.

23.

The Court erred in holding that the fact that the appellant had paid the purchase price in good faith and had incurred other burdens, risks and expenses on the chance that a contingent interest might vest and the fact that thereafter said contingent interest did vest constitutes no such change of conditions as would make it inequitable to compel the appellant to convey a vested estate in exchange for the purchase price of a contingent interest.

24.

The Court erred in cancelling the deed because at the time of the execution of the deed of 1910, the appellant paid an adequate consideration, and in the eighteen years elapsing between the execution of the deed and the bringing [872] of the suit the premises had increased many fold in value.

25.

The Court erred in holding that an increase in value due to natural causes is not a bar to the restoration to status quo.

26.

The Court erred in directing cancellation of the deed of 1910, for the reason that, appellant, after the purchase of the contingent interest of Eliza R. P. Christian under said deed, erected large and valuable improvements in good faith upon the premises and cannot now be restored to status quo.

27.

The Court erred in cancelling the deed of 1910 for the reason that, after obtaining the deed from Eliza R. P. Christian of her contingent interest in the disputed premises, appellant erected large and valuable improvements adjacent to and off the disputed premises as an integral part of its plantation system and cannot now be restored to status quo.

28.

The Court erred in holding that the efficiency of the Wahiawa dam and reservoir will not be appreciably diminished by the loss to Eliza R. P.

Christian of one-third of the Holt estate cane lands, and in holding that said loss is not an impediment to status quo. [873]

29.

The Court erred in holding that the sale of Eliza R. P. Christian's contingent interest in the premises by the deed of 1910 was not for her benefit.

30.

The Court erred in failing to hold that the sale of Eliza R. P. Christian's contingent interest was beneficial to her.

31.

The Court erred in finding that Eliza R. P. Christian "never received the money which was paid for her interest" (31 H. 894), which finding is contrary to the evidence.

32.

The Court erred in failing to enter a decree dismissing the bill upon the ground that the suit was barred by the statute of limitations.

33.

The Court erred in failing to enter a decree dismissing the bill upon the ground of appellee's laches.

34.

The Court erred in failing to enter a decree dismissing the bill upon the ground of laches of appellee's attorneys, who were employed in the above cause four years prior to the filing of said bill.

35.

The Court erred in failing to require as a concurrent [874] rent or precedent condition to the cancellation of said deed of 1910 and the execution of the deed from appellant to Eliza R. P. Christian which the Court decreed be executed and delivered, the repayment by Eliza R. P. Christian to the appellant of the purchase price of \$32,500, together with interest thereon at the lawful rate from May 2, 1910, to the date of cancellation.

36.

The Court erred in cancelling the deed of 1910 because the penalty thereby imposed on the appellant is unconscionable and inequitable.

WHEREFORE, appellant prays that the decree of the Supreme Court of the Territory of Hawaii dated March 25, 1935, be reversed (1) in the particulars whereof error is assigned; (2) that a decree be entered directing that appellee's bill be dismissed; and (3) for such other and further relief as may be appropriate.

DATED: Honolulu, T. H., June 4th, 1935.

WAIALUA AGRICULTURAL
COMPANY, LIMITED,

Appellant.

By ROBERTSON & CASTLE

By J. G. ANTHONY

and

BROBECK, PHLEGER &
HARRISON,

Its Attorneys. [875]

[Title of Court and Cause.]

REQUEST TO JOIN IN APPEAL.

Filed June 5, 1935, at 11:21 o'clock A. M.
(s) Robert Parker, Jr., Clerk Supreme Court. [876]

To James L. Holt and Annie Holt Kentwell, Respondents-Appellants in the above entitled cause, and to John R. Desha and Barry S. Ulrich, their attorneys:

You and each of you will please take notice that Waialua Agricultural Company, Limited, one of the respondents-appellants in the above entitled cause, will present its petition for appeal from the decree in the above entitled cause to the Honorable Acting Chief Justice and Associate Justice of the Supreme Court of the Territory of Hawaii at 2 o'clock p. m. on the 5th day of June, 1935, at which time and place you are requested to join in said petition for the allowance of said appeal.

Dated: Honolulu, T. H., June 4th, 1935.

ROBERTSON & CASTLE

By (s) J. G. ANTHONY, and

BROBECK, PHLEGER &

HARRISON

Attorneys for Waialua Agricultural Company, Limited, respondent-appellant above named. [877]

Service of a copy of the foregoing Request to Join in Appeal is hereby admitted this 4th day of June, 1935.

(s) JOHN R. DESHA

Attorney for James L. Holt and
Annie Holt Kentwell,

Respondents-Appellants.

(s) JOHN R. DESHA

Attorney for Annie Holt
Kentwell,

Respondent-Appellant.

(s) BARRY S. ULRICH

(s) CHAS. M. HITE

Attorneys for Eliza R. P.
Christian,

Petitioner-Appellee. [878]

[Title of Court and Cause.]

ORDER OF SEVERANCE.

Filed June 8, 1935 at 10:25 o'clock a. m. (s) Robert Parker, Jr., Clerk Supreme Court. [879]

It appearing that on the 4th day of June 1935. James L. Holt and Annie Holt Kentwell, co-respondents-appellants had been duly notified and requested by Waialua Agricultural Company, Limited, respondent-appellant, to join in said petition for appeal, but have failed or refused to join therein, the said Waialua Agricultural Company, Limited, re-

spondent-appellant, is hereby granted the right to appeal alone without joining the said James L. Holt and Annie Holt Kentwell as appellants.

Dated: Honolulu, T. H., June 8, 1935.

[Seal]

(s) JAS. J. BANKS

Acting Chief Justice, Supreme
Court, Territory of Hawaii.

Attest:

(s) ROBERT PARKER, JR.

Clerk Supreme Court. [880]

Service of a copy of the foregoing Order of Severance is hereby admitted this 8th day of June, 1935.

(s) CHAS. M. HITE

(s) BARRY S. ULRICH

Attorneys for Petitioner-
Appellee.

(s) JOHN R. DESHA

Attorney for James L. Holt and
Annie Kentwell, respondents-
Appellants.

(s) JOHN R. DESHA

Attorney for Annie Kentwell,
Respondent-Appellant. [881]

[Title of Court and Cause.]

**ORDER ALLOWING APPEAL AND FIXING
AMOUNT OF BOND.**

Filed June 8, 1935, at 10:26 o'clock A. M. Robert Parker, Jr., Clerk Supreme Court. [882]

Upon reading and filing the verified Petition for Appeal and Assignment of Errors presented to this Court by WAIALUA AGRICULTURAL COMPANY, LIMITED, in which it prays that an appeal may be allowed it to the United States Circuit Court of Appeals for the Ninth Circuit from the final decree of this Court made and entered March 25, 1935, in the above entitled cause, wherein it is alleged that manifest and material errors have occurred to the end that said errors, if any there be, may be speedily corrected and justice done in the premises;

IT IS HEREBY ORDERED that said appeal to the United States Circuit Court of Appeals be and the same is hereby allowed, and said Waialua Agricultural Company, Limited, respondent-appellant, is ordered to file with the Clerk of this Court an approved bond in the penal sum of \$5,000.00 within thirty days from the date hereof, conditioned that it will prosecute said appeal to conclusion [883] and effect and answer all damages and pay all costs if it fails to make good its said appeal.

Dated: Honolulu, T. H., June 8, 1935.

JAS. J. BANKS

Acting Chief Justice of the Supreme Court of the Territory of Hawaii.

Attest:

[Seal] **ROBERT PARKER, Jr.,**
Clerk, Supreme Court.

Service of a copy of the foregoing Order Allowing Appeal and Fixing Amount of Bond is hereby admitted this 8th day of June, 1935.

BARRY S. ULRICH

CHAS. M. HITE

Attorneys for Petitioner-Appellee

JOHN R. DESHA

Attorney for James L. Holt and
Annie Kentwell, Respondents-
Appellants.

JOHN R. DESHA

Attorney for Annie Kentwell,
Respondent-Appellant. [884]

[Title of Court and Cause.]

BOND ON APPEAL.

Filed June 8, 1935, at 10:27 o'clock a. m. (s) Robert Parker, Jr., Clerk Supreme Court. [885]

KNOW ALL MEN BY THESE PRESENTS:
That **WAIALUA AGRICULTURAL COMPANY,**

LIMITED, as principal, and FRANK C. ATHERTON and T. H. PETRIE, of Honolulu, Territory of Hawaii, as sureties, are held and firmly bound unto ELIZA R. P. CHRISTIAN, petitioner-appellee, in the penal sum of FIVE THOUSAND DOLLARS (\$5,000.00) for the payment of which, well and truly to be made to the said Eliza R. P. Christian, the said Waialua Agricultural Company, Limited, as principal, and Frank C. Atherton and T. H. Petrie, as sureties, by these presents do bind themselves, their respective successors, heirs, executors, and assigns, jointly and severally and firmly by these presents.

The condition of this obligation is such that:

WHEREAS, the above bounden principal has filed or is about to file, its petition for an appeal to the United [886] States Circuit Court of Appeals for the Ninth Circuit from the decree entered in the above entitled cause by the Supreme Court of the Territory of Hawaii;

NOW, THEREFORE, if the said principal shall prosecute its appeal with effect, and answer all damages and costs if it fails to sustain said appeal, then this obligation shall be void, otherwise, it shall remain in full force and effect.

IN WITNESS WHEREOF, the said Waialua Agricultural Company, Limited, has caused its name to be signed and its *corporate duly* authorized, and the said Frank C. Atherton and T. H.

Petrie, as sureties, have hereunto set their hands this 5th day of June, 1935.

WAIALUA AGRICULTURAL
COMPANY, LIMITED,

[Seal] By (s) A. E. BUDGE

Its President.

and

By (s) W. M. BUSH

Its Assistant Treasurer.

Principal.

(s) FRANK C. ATHERTON

(s) T. H. PETRIE

Sureties [887]

Territory of Hawaii

City and County of Honolulu—ss.

FRANK C. ATHERTON and T. H. PETRIE, being first duly sworn, each for himself and not one for the other, under oath deposes and says: That they are sureties on the foregoing bond; that they are residents of Honolulu, Territory of Hawaii, and have property situated within said Territory subject to execution and that they are worth in such property more than double the amount of the penalty specified in said bond, over and above all of their just debts and liabilities and property exempt from execution.

(s) FRANK C. ATHERTON

(s) T. H. PETRIE

Subscribed and sworn to before me this 5th day of June, 1935.

[Notarial Seal] (s) JOHN F. STONE

Notary Public, First Judicial Circuit, Territory of Hawaii.

The foregoing bond is hereby approved as to form, amount, and sufficiency of sureties.

[Seal] (s) JAS. J. BANKS

Acting Chief Justice.

Attest:

(s) ROBERT PARKER, Jr.

Clerk Supreme Court. [888]

[Title of Court and Cause.]

CITATION ON APPEAL.

Filed June 8, 1935, at 10:30 o'clock a. m. Robert Parker, Jr., Clerk Supreme Court [889]

United States of America—ss.

The President of the United States of America to Eliza R. P. Christian, an incompetent person, by Herman V. von Holt, her guardian, appellee; James L. Holt and Annie Holt Kentwell; and to Barry S. Ulrich, Charles M. Hite and John R. Desha, their attorneys, Greeting:

You and each of you are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for the Ninth Circuit in

the City of San Francisco, State of California, within thirty (30) days from the date of this Citation, pursuant to an appeal duly allowed and filed in the office of the Clerk of the Supreme Court of the Territory of Hawaii on June 8th, 1935, in the said cause wherein Waialua Agricultural Company, Limited, is appellant, and you are appellees, to show cause, if any [890] there may be, why the final decree made and entered in the Supreme Court of the Territory of Hawaii on March 25, 1935, should not be corrected and speedy justice done to the parties in that behalf.

WITNESS the Honorable Charles Eyans Hughes, Chief Justice of the Supreme Court of the United States of America, this 8th day of June, 1935.

JAS. J. BANKS,

Acting Chief Justice, Supreme
Court of the Territory of Ha-
wail.

Attest:

[Seal] ROBERT PARKER, JR.,
Clerk, Supreme Court of the
Territory of Hawaii.

Service of a copy of the foregoing Citation on Appeal is hereby admitted this 8th day of June, 1935.

BARRY S. ULRICH
CHAS. M. HITE

Attorneys for Eliza R. P.
Christian, Appellee.

JOHN R. DESHA
Attorney for James L. Holt and
Annie Holt Kentwell. [891]

[Title of Court and Cause.]

APPEARANCE OF ANNIE HOLT
KENTWELL.

Filed June 10, 1935 at 10:25 o'clock a. m. Gus K. Sproat, Deputy Clerk Supreme Court. [892]

WHEREAS, the Petition of Herman V. von Holt, guardian of the Estate of Eliza R. P. Christian, for the allowance of an appeal from the decree of the Supreme Court of the Territory heretofore entered in the above-entitled matter has been heretofore duly presented; and

WHEREAS, an order has been duly made and entered allowing such appeal; and

WHEREAS, citation has heretofore issued citing the parties to the above-entitled cause to be and appear before the United States Circuit Court of Appeals for the Ninth Judicial Circuit on such appeal;

NOW, THEREFORE, Annie Holt Kentwell, Respondent in the above-entitled matter, does hereby enter her appearance on such appeal and in the above-entitled cause in the Supreme Court of the Territory of Hawaii and in said United States Circuit Court of Appeals for the Ninth Judicial [893] Circuit, submitting herself in all wise to the jurisdiction of said Supreme Court of the Territory of Hawaii and of said United States Circuit Court of Appeals for the Ninth Judicial Circuit, and undertaking that she shall be bound by whatever action, judgment or decree may be taken and entered in said matter.

Dated at 49 Cornmarket Street, Oxford, England,
this 14th day of May, 1935.

(s) ANNIE HOLT KENTWELL

Respondent herein.

James Lungley, Solicitor, Oxford—ss.

Before me this day personally appeared ANNIE
HOLT KENTWELL, to me known to be the Annie
Holt Kentwell named in and who duly executed the
foregoing appearance and acknowledged to me that
she did execute said appearance as her free act
and deed.

Dated at 49 Cornmarket Street, Oxford, England,
this 14th day of May, 1935.

(s) JAMES LUNGLEY

Commissioner of Oaths of the
Supreme Court of Judicature
in England. [894]

[Title of Court and Cause.]

NOTICE.

Filed June 12, 1935 at 11:45 o'clock a. m. (s) Gus
K. Sproat, Deputy Clerk Supreme Court. [895]

To: Waialua Agricultural Company, Limited, an
Hawaiian corporation, and Messrs. Brobeck,
Phleger & Harrison and Robertson & Castle, its
attorneys; James L. Holt, and Annie Holt
Kentwell, and John R. Desha, Esquire, their
attorneys:

You and each of you will please take notice that
on Friday, July 12, 1935 at the hour of ten o'clock

a. m. of said day, or as soon thereafter as counsel can be heard, we will ask the Honorable James J. Banks, Justice of the Supreme Court of the Territory of Hawaii, in the Chambers of said Justice, to settle and approve the Statement of the Evidence in the above entitled cause, lodged in the Clerk's office of said Court this 12th day of June, 1935.

ELIZA R. P. CHRISTIAN.

An incompetent person.

By HERMAN V. VON HOLT,
Her Guardian,

Petitioner-Appellee,

By BARRY S. ULRICH and
CHARLES M. HITE,

By (s) CHAS. M. HITE

Her Attorneys.

Receipt of a copy of the foregoing Notice, together with copy of the proposed Statement of the Evidence, admitted this 12th day of June, 1935.

ROBERTSON & CASTLE,

By (s) J. G. ANTHONY

Attorneys for Waialua Agricultural Company, Limited.

(s) JOHN R. DESHA

Attorney for James L. Holt and
Annie Holt Kentwell. [896]

[Title of Court and Cause.]

**STIPULATION FOR PURPOSES OF
RECORD ON APPEAL.**

Filed April 27, 1936 at 9:35 o'clock a. m. (s) Robert Parker, Jr., Clerk Supreme Court. [897]

IT IS STIPULATED AND AGREED by and between ELIZA R. P. CHRISTIAN, an incompetent person, by Herman V. von Holt, her Guardian, and WAIALUA AGRICULTURAL COMPANY, LIMITED, both parties appealing herein to the United States Circuit Court of Appeals for the Ninth Circuit, that for the purposes of the record on appeal and in order to avoid duplication and to reduce the said record, as follows:

1. That Exhibits A, B, C, D, and E referred to and described in the original petition and in the first amended petition are identical;

2. That Exhibits A, B, C, D, and E referred to and described in the second amended petition are identical with [898] Exhibits A, B, C, D, and E referred to and described in the original petition and in the said first amended petition;

3. That only one set of said Exhibits A, B, C, D, and E need to be transmitted on appeal.

IN WITNESS WHEREOF said parties have hereunto set their hands, through their respective attorneys.

Dated: Honolulu, T. H.; April 27, 1936.

ELIZA R. P. CHRISTIAN,

An incompetent person,

By HERMAN V. VON HOLT,

Her Guardian,

By (s) CHAS. M. HITE,

Her Attorney.

WAIALUA AGRICULTURAL

COMPANY, LIMITED,

By ROBERTSON & CASTLE,

By (s) ALBERT L. CASTLE

Its Attorneys.

Approved:

(s) JAS. J. BANKS

Justice Supreme Court of the
Territory of Hawaii.

Attest:

(s) ROBERT PARKER, JR.

Clerk Supreme Court of the
Territory of Hawaii. [899]

[Title of Court and Cause.]

REQUEST FOR A SUBSTITUTE JUSTICE.

Filed July 24, 1936 at 11:49 o'clock a. m. (s) Gus
K. Sproat, Deputy Clerk Supreme Court. [900]

To Honorable Delbert E. Metzger, Circuit Judge,
Fourth Circuit:

Honorable Norman D. Godbold, First Judge, Cir-
cuit Court, First Circuit having formerly sat as a
member of this court in the above entitled cause as

substitute justice in place of Honorable James L. Coke, Chief Justice, disqualified, and Judge Godbold being now dead, we the remaining justices of the Supreme Court, hereby request and authorize you to sit with us as substitute justice in place of Honorable James L. Coke, Chief Justice, disqualified, to hear and determine any and all matters in the above entitled cause.

Dated the 24th day of July, 1936.

(s) JAS J. BANKS

Associate Justice.

(s) E. C. PETERS

Associate Justice.

Attest:

[Seal] (s) GUS K. SPRQAT

Deputy Clerk. [901]

[Title of Court and Cause.]

STIPULATION

Filed July 24, 1936 at 2:13 o'clock P. M. (s) Gus K. Sproat, Deputy Clerk Supreme Court. [902]

IT IS HEREBY STIPULATED by and between the parties hereto that,

WHEREAS, each of them is appealing from the decree of the Supreme Court of the Territory of Hawaii made and entered herein on the 25th day of March, 1935, and therefore obligated to file a statement of the evidence with the clerk of the court from which the appeal is taken; and

WHEREAS, it is the desire to obviate such duplication and to file only one such statement;

NOW, THEREFORE, IT IS AGREED that the foregoing statement of the evidence herein, being duly lodged with the clerk by both of the parties hereto, and now amended and settled by the Supreme Court of the Territory of Hawaii, shall serve as the [903] statement of each of the parties hereto upon the appeals herein in satisfaction of the requirement of Supreme Court Equity Rule No. 75.

IT IS FURTHER AGREED that certain facts were admitted by respective counsel, certain stipulations entered into, and certain exhibits introduced, at the several hearings in the trial court; and that such facts, stipulations and exhibits, in full or condensed form, are correctly set forth in the Condensed Statement of Evidence, and more particularly from the beginning of such Statement and down to the title, "Narrative Statement of Further Evidence" therein.

Dated: Honolulu, T. H., July 24, 1936.

(s) CHAS. M. HITE

Attorney for the Petitioner
ROBERTSON & CASTLE,

By (s) ALFRED L. CASTLE

Attorneys for the Respondent
Waialua Agricultural Company, Limited.

The foregoing stipulation is approved:

[Seal]

(s) JAS. J. BANKS

Justice of the Supreme Court
of the Territory of Hawaii.

[Title of Court and Cause.]

PRAECIPE FOR TRANSCRIPT OF RECORD

Filed July 30, 1936 at 8:40 o'clock A. M. Robert Parker, Jr., Clerk Supreme Court. [905]

To Robert Parker, Jr., Esquire, Clerk of the Supreme Court of the Territory of Hawaii:

YOU WILL PLEASE prepare and certify a transcript of the record in this, the above entitled cause, to be filed in the office of the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, under the appeal heretofore allowed, and include in said transcript the following pleadings, proceedings, opinions, judgments, exhibits, and papers on file in said cause, to-wit:

1. Original petition filed May 9, 1928, with Exhibits A, B, C, D, and E, and Chambers Summons;
2. Answer of James L. Holt, filed May 18, 1928;
3. Answer of Waialua Agricultural Company, Limited, filed July 16, 1928; [906]
4. Replication of petitioner to answer of Waialua Agricultural Company, Limited, filed July 18, 1928;
5. Replication of petitioner to answer of James L. Holt, filed July 20, 1928;
6. Amended bill for cancellation, filed March 5, 1929;
7. Answer of respondent Waialua Agricultural Company, Limited, to amended complaint, filed March 8, 1929;
8. Stipulation substituting name Herman V. von Holt as Guardian in place of George H. Holt, filed March 12, 1929;

9. Decision of Honorable Albert M. Cristy, dated May 11, 1929;
10. Motion by Waialua Agricultural Company, Limited to dismiss bill, filed July 12, 1929;
11. Appearance of Annie Holt Kentwell, filed August 1, 1929;
12. Supplemental decision re accounting by Honorable Albert M. Cristy, filed August 9, 1929;
13. Decree of Circuit Court, First Circuit (without exhibit) filed October 16, 1929;
14. Notice of appeal, and appeal, filed October 19, 1929;
15. Opinion of the Supreme Court, filed April 18, 1931;
16. Order remanding cause, dated May 21, 1931;
17. Notice of order remanding cause, filed May 22, 1931;
18. Request by Waialua Agricultural Company, Limited to James L. Holt to join in appeal, filed July 20, 1931;
19. Petition for appeal by Waialua Agricultural Company, Limited, filed July 23, 1931;
20. Order allowing appeal and fixing amount of bond, filed July 24, 1931; [907]
21. Citation on appeal, dated and filed July 24, 1931;
22. Order of severance, dated and filed July 24, 1931;
23. Order extending time to prepare statement of evidence, file record, and docket cause, filed July 29, 1931;

24. Mandate of United States Circuit Court of Appeals for the Ninth Circuit, dated October 19, 1931;
25. Notice of above mandate, dated October 28, 1931;
26. Motion by Eliza R. P. Christian for allowance of amendments to pleadings, filed May 25, 1931;
27. Second amended petition, with Exhibits F and G, filed May 25, 1931;
28. Objections by Waialua Agricultural Company, Limited to allowance of proposed second amended petition, filed October 31, 1931;
29. Clerk's minutes of October 31, 1931;
30. Motion for order of service on Annie Kentwell as shown by clerk's minutes November 6, 1931;
31. Motion for commission to take depositions, with affidavits attached, dated November 18, 1931;
32. Amended motion to take depositions, with affidavit attached, dated November 20, 1931;
33. Oral ruling of Judge A. M. Cristy of November 23, 1931;
34. Affidavits in opposition to motions to take depositions, filed November 30, 1931;
35. Counter-affidavit of A. L. Castle, filed December 24, 1931;
36. Motion for commission, dated January 7, 1932;
37. Clerk's minutes re proceedings on foregoing motions, of January 9, 1932; [908]
38. Clerk's minutes on foregoing proceedings, January 21, 1932;

39. Motion to take depositions, filed February 29, 1932;

40. Answer of James L. Holt to second amended petition, filed December 5, 1931;

41. Answer of Annie Holt Kentwell to second amended petition, filed January 15, 1932;

42. Answer of Waialua Agricultural Company, Limited, to second amended petition, filed December 24, 1931;

43. Replication to answer of James L. Holt, filed December 7, 1931;

44. Replication to answer of Waialua Agricultural Company, Limited, filed January 4, 1932;

45. Decision Honorable A. M. Cristy, filed August 18, 1932;

46. Decree Circuit Court, First Circuit, filed September 6, 1932;

47. Notice of appeal and appeal, filed September 10, 1932;

48. Decision of Supreme Court, dated May 3, 1934;

49. Exhibit A, being map showing lands and improvements considered in the decision of the Supreme Court, filed December 19, 1934, and Exhibit B, containing descriptions of lands considered in said decision;

50. Statement of disqualification Chief Justice Coke, filed January 18, 1935;

51. Request for a substitute Justice, filed January, 18, 1935;

52. Decree of Supreme Court, Territory of Hawaii, dated and filed March 25, 1935;

53. Petition for allowance of appeal, filed April 18, 1935; [909]

54. Assignment of errors, filed April 18, 1935;

55. Notice of appeal and acknowledgment of service, filed April 18, 1935;

56. Order allowing appeal and fixing bond, filed April 23, 1935;

57. Bond, filed April 24, 1935;

58. Citation, filed April 26, 1935;

59. Consent to appearance of counsel, filed April 26, 1935;

60. Motion for leave to appear as counsel, with attached letters and cables, filed May 1, 1935;

61. Order entering John R. Desha as counsel, filed May 1, 1935;

62. Acknowledgment of service of citation, filed May 9, 1935;

63. Appearance of Annie Kentwell, filed June 10, 1935;

64. Notice, filed June 12, 1935;

65. Stipulation for purposes of record, filed April 27, 1936;

66. Request for a substitute justice, filed July 24, 1936;

67. Condensed statement of the evidence, filed July 24, 1936, including Court's order and approval of same;

68. Stipulation of counsel regarding condensed statement of evidence, filed July 24, 1936;

69. All orders enlarging time within which to file statement of evidence and praecipe and docketing cause in United States Circuit Court of Appeals for the Ninth Circuit;

70. This praecipe, filed July 30, 1936; [910]

AND THE FOLLOWING EXHIBITS:

71. Petitioner's Exhibit C, being map;

72. Petitioner's Exhibits D-10, D-11, D-13, D-15, D-16, D-19, D-21, D-22, D-25, D-28, D-29, D-30, D-32, and D-37;

73. Petitioner's Exhibit A-21;

74. Petitioner's Exhibits 1 and 2 in connection with the deposition of Dr. Thomas Saxty Good;

75. Exhibit, being book or pamphlet, entitled, "Scale of Tests," accompanying deposition of Dr. Thomas Saxty Good;

76. Slips in connection with Exhibit D-35;

77. Two powers of attorney, Exhibits 15-A and 15-B;

78. Respondent's Exhibit 6-A;

79. Respondent's Exhibits 2, 3, 4, 5, and 6, for identification, attached to deposition Dr. Masson and contained in sealed envelope;

80. Respondent's Exhibit S-3, map;

81. Respondent's Exhibit S-4, map;

82. Petitioner's Exhibit R-9, for identification, being sealed envelope;

83. Book of photographs, Exhibit S-9;

84. Photostat copy of page with signatures on Exhibit A-21, same to be inserted at end of printed volume of condensed statement of evidence;

85. Reduced reproductions of maps Exhibits C, S-3 and S-4, same to be inserted as above.

DATED: HONOLULU, T. H., JULY 30, 1936.

ELIZA H. P. CHRISTIAN, an incompetent person, by HERMAN V. VAN HOLT, her Guardian, Petitioner-Appellee, _o

By CHARLES HITE,

Her Attorney [911]

Service of the foregoing Praecipe acknowledged this 30th day of July, 1936.

WAIALUA AGRICULTURAL
COMPANY, LIMITED

By ROBERTSON & CASTLE

Its Attorneys.

ANNIE HOLT KENTWELL and
JAMES L. HOLT

By JOHN R. DESHA

Their Attorneys. [912]

[Title of Court and Cause.]

STIPULATION FOR PURPOSES OF
RECORD ON APPEAL.

Filed Aug. 5, 1936, at 2:30 o'clock P. M. Robert Parker, Jr., Clerk Supreme Court. [912-A]

IT IS STIPULATED AND AGREED by and between the parties hereto that the contents of Exhibits A and B, referred to in and a part of a certain stipulation entered herein on or about the 19th

day of December, 1934, being likewise incorporated in the Decree of the Supreme Court entered herein March 25, 1935, need not be incorporated in the record on appeal herein, as a part of said stipulation of December 19, 1934, but shall be omitted therefrom.

IT IS FURTHER STIPULATED AND AGREED that Exhibit A referred to in and a part of said Decree of March 25, 1935, being an original map, may be transmitted by the Clerk to the United States Circuit Court of Appeals for the Ninth Circuit [912-B] in original form in connection with the record on appeal herein.

IN WITNESS WHEREOF said parties have hereunto set their hands, through their respective attorneys.

Dated, Honolulu, T. H., August 5th, 1936.

ELIZA R. P. CHRISTIAN, an incompetent person, by HERMAN V. VON HOLT, her Guardian.

By CHARLES HITE,

Her Attorney.

WAIALUA AGRICULTURAL
COMPANY, LIMITED.

By ROBERTSON & CASTLE,

Its Attorneys.

ORDER.

The foregoing stipulation is hereby approved, and it is hereby ordered that an original map, being a part of the Decree of this Court herein entered

March 25, 1935, and marked Exhibit A, be transmitted by the Clerk to the United States Circuit Court of Appeals for the Ninth Circuit in its original form as a part of the record on appeal herein.

[Seal]

JAS J. BROWN,

Associate Justice, Supreme Court
of Hawaii. [912-C]

[Title of Court and Cause.]

PRAECIPE FOR TRANSCRIPT OF RECORD.

Filed Aug. 6, 1936, at 3:00 o'clock P. M. Robert Parker, Jr., Clerk Supreme Court: [913]

To ROBERT PARKER, JR., ESQUIRE, Clerk of
the Supreme Court of the Territory of Hawaii:

YOU ARE HEREBY REQUESTED to prepare and certify a transcript of record in this, the above entitled cause, to be filed in the United States Circuit Court of Appeals for the Ninth Circuit, pursuant to the appeal allowed in said cause, and to include in such transcript the following, and no other, pleadings, proceedings, opinions, decisions, exhibits, and papers on file, to-wit:

1. Bill of Cancellation filed May 9, 1928, and exhibits A, B, C, D and E attached thereto.
2. Chambers Summons attached thereto with return of service.
3. Answer of James L. Holt, filed May 18, 1928.

[914]

4. Demurrer of Respondent Waialua Agricultural Co., Ltd., filed June 12, 1928.
5. Decision on Demurrer filed June 22, 1928.
6. Answer of Waialua Agricultural Co., Ltd., filed July 16, 1928.
7. Replication of Eliza R. P. Christian by her Guardian, filed July 20, 1928, to answer of Waialua Agricultural Co., Ltd.
8. Replication of Eliza R. P. Christian by her Guardian, filed July 20, 1928, to answer of James L. Holt.
9. Notice to Produce Will, directed to Eliza R. P. Christian and her attorneys, dated December 4, 1928.
10. Amended Bill for Cancellation, filed March 5, 1929.
11. Answer of Waialua Agricultural Co., Ltd., to Amended Bill, filed March 8, 1929.
12. Stipulation that name of H. von Holt as Guardian be substituted for George H. Holt, filed March 12, 1929.
13. Decision of Hon. A. M. Cristy, dated May 11, 1929.
14. Motion of the Waialua Agricultural Co., Ltd., for dismissal of bill, filed July 12, 1929.
15. Appearance of Annie Holt Kentwell, filed August 1, 1929.
16. Supplemental decision on accounting by Hon. A. M. Cristy.
17. Decree of the Circuit Court, First Circuit, filed October 16, 1929.

18. Notice of Appeal and Appeal of Waialua Agricultural Co., Ltd., to Supreme Court of Hawaii, dated October 19, 1929.
19. Opinion of Supreme Court of Hawaii, dated April 18, 1931.
20. Objections of Respondent Waialua to Proposed Order Remanding Cause, dated May 21, 1931.
21. Order Remanding Cause, dated May 21, 1931.
22. Notice of Order Remanding Cause, dated May 22, 1931.
23. Motion to Allow Amended Pleadings, filed May 25, 1931.
24. Stipulation for Purposes of Record on Appeal, filed in Supreme Court, April 27, 1936. [915]
25. Petitioner's Second Amended Petition, dated May 25, 1931, together with Exhibits F and G, but omitting Exhibits A to E inclusive.
26. Objection by Waialua Agricultural Co., Ltd., to allowance of proposed second amended bill, dated October 31, 1931.
27. Clerk's Minutes of October 31, 1931, showing ruling on objections.
28. Waialua Agricultural Co., Ltd., special demurrer to second amended petition, dated November 14, 1931.
29. Clerk's Minutes of November 17, 1931, showing ruling on Special Demurrer.
30. Answer of James L. Holt to second amended petition, filed December 5, 1931.
31. Replication of Petitioner to Answer of James L. Holt, filed December 7, 1931.

32. Notice to Produce Deed, Christian to Kentwell, dated December 8, 1931.
33. Answer of Waialua Agricultural Co., Ltd., to Second Amended Petition, dated December 24, 1931.
34. ~~Replication of Petitioner to Answer of Waialua Agricultural Co., Ltd., filed January 4, 1932.~~
35. Answer of Annie Holt Kentwell to second amended petition, filed January 15, 1932.
36. Decision of Honorable A. M. Cristy on Remand, filed August 18, 1932.
37. Decree Circuit Court, First Circuit, entered September 6, 1932.
38. Notice of Appeal and Appeal of Waialua Agricultural Company, Ltd., dated September 9, 1932.
39. Opinion of Supreme Court of Hawaii, dated May 3, 1934.
40. Stipulation and Agreement for Purposes of Decree to be Entered, dated December 19, 1934, omitting Exhibits A and B.
41. Statement of Disqualification of Chief Justice Coke, filed January 18, 1935.
42. Request for a substitute Justice, filed January 18, 1935.
43. Decree of Supreme Court of Hawaii, dated March 25, 1935, with Exhibits A and B attached (Exhibit A to be transmitted in original form).
[916]
44. Consent to Appearance of Counsel, filed April 26, 1935.

45. Motion for leave to appear as counsel, filed May 1, 1935, together with attached letters and cables.
46. Order entering John R. Desha as counsel, filed May 1, 1935.
47. Petition for Appeal, filed by Waialua Agricultural Co., Ltd., June 5, 1935, with acknowledgment of service.
48. Assignment of Errors, filed June 5, 1935.
49. Request to Join in Appeal, filed June 5, 1935, with acknowledgment of service.
50. Order of Severance, filed June 8, 1935, with acknowledgment of service.
51. Order Allowing Appeal and Fixing Amount of Bond, filed June 8, 1935, with acknowledgment of service.
52. Bond on Appeal, filed June 8, 1935.
53. Citation on Appeal, filed June 8, 1935, with acknowledgment of service.
54. Appearance of Annie Holt Kentwell, filed June 10, 1935.
55. Request for substitute Justice, filed July 24, 1936.
56. Condensed Statement of Evidence, including Court's Order attached thereto approving same, and Order re Certain Exhibits, filed July 24, 1936.
57. Stipulation of counsel regarding Condensed Statement of Evidence, filed July 24, 1936.
58. Stipulation for Purposes of Record on Appeal, and Order, filed August 5, 1936.

59. All orders enlarging time within which to file statement of evidence and praecipe, and docketing cause in United States Circuit Court of Appeals for the Ninth Circuit.
60. **This Praecipe.**
61. Other Stipulations and Orders which may be entered herein prior to the transmittal of the record to the United States Circuit Court of Appeals for the Ninth Circuit.
62. The following original exhibits, to be transmitted in their original form:
 - a. Cables numbered and lettered Petitioner's Exhibits D-10, D-11, D-13, D-15, D-16, D-19, D-21, D-22, D-25, D-27, D-28, D-29, D-30, and D-32.
 - b. Two undated slips on paper of Canadian Bank of Commerce, London, and introduced in connection with Exhibit D-35. [917]
 - c. Unsigned draft of agreement, Petitioner's Exhibit D-37.
 - d. Map, Petitioner's Exhibit C.
 - e. Petitioner's Exhibits 1 and 2 in connection with the testimony of Dr. Good.
 - f. Petitioner's Exhibit 6-A, catechism in connection with testimony of Mrs. Alice Fisher.
 - g. Two powers of attorney, Respondent's Exhibits 15-A and 15-B.
 - h. Envelope containing hospital sheets, marked Respondent's Exhibits 2, 3, 4, 5 and 6 for identification in connection with testimony of Dr. Masson.

- i. Two maps, Respondent's Exhibits S-3 and S-4.
 - j. Book of photographs, Respondent's Exhibit S-9.
 - k. Envelope marked Petitioner's Exhibit R-9 for identification.
 - l. Map attached to Decree of Supreme Court, dated March 25, 1935, and marked Exhibit A.
63. The following photostat copies, or reduced reproductions of exhibits:
- a. Photostat copy of page of grantor signatures in Petitioner's Exhibit A-21, the same to be inserted at the end of the printed volume of the Condensed Statement of Evidence.
 - b. Reduced reproductions of Maps, Exhibits C, S-3, and S-4, the same to be inserted at the end of the printed volume of the Condensed Statement of Evidence.

Said transcript of record on appeal to be prepared as required by law and the rules of this Court and the rules of the United States Circuit Court of Appeals for the Ninth Circuit, and to be filed in the office of the clerk of said United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, on or before the 30th day of September, 1936, [918] pursuant to orders of this Court enlarging and extending the time for filing said transcript.

DATED, Honolulu, T. H., August 5, 1936.

ROBERTSON & CASTLE,

Attorneys for Appellant,
Waialua Agricultural
Company, Limited.

Service of the foregoing Praecipe is hereby acknowledged this 6 day of August, 1936,

CHAS. M. HITE,

Attorney for Petitioner-Appellee, Eliza R. P. Christian, an incompetent person, by Herman V. von Holt, her Guardian.

JOHN R. DESHA,

Attorney for James L. Holt and Annie Holt Kentwell.

[919]

[Title of Court and Cause.]

CLERK'S CERTIFICATE

I, ROBERT PARKER, JR., Clerk of the Supreme Court of the Territory of Hawaii, by virtue of the petitions for appeal filed April 18, 1935 and June 5, 1935 respectively, the originals whereof are attached to the foregoing transcript of record, being pages 799 to 804, both inclusive, pages 861 to 864, both inclusive, and in pursuance to the praecipes, filed herein July 30, 1936 and August 6, 1936, origi-

nals whereof are attached to the foregoing transcript, being pages 905 to 919, both inclusive.

DO HEREBY TRANSMIT to the Honorable United States Circuit Court of Appeals for the Ninth Circuit, the foregoing transcript of record, being pages 1 to 798, both inclusive, 838 to 840, both inclusive, pages 844 to 846, both inclusive, pages 850 to 860, both inclusive, 876 to 881, both inclusive, 885 to 888, both inclusive, pages 892 to 904, both inclusive, and I CERTIFY the same to be full, true and correct copies of the originals, which are now on file in the office of the Clerk of the Supreme Court of the Territory of Hawaii, in the above entitled cause, Numbers 1920 and 2078.

I DO FURTHER CERTIFY that the original assignment of errors, filed April 18, 1935, being pages 805 to 837, both inclusive, original order allowing appeal and fixing amount of bond, filed April 23, 1935, pages 841 to 843, both inclusive, original citation on appeal, filed April 26, 1935, pages 847 to 849, both inclusive, the original assignment of errors, filed June 5, 1935, pages 865 to 875, both inclusive, the original order allowing appeal and fixing amount of bond, filed June 8, 1935, pages 882 to 884, both inclusive, the original citation on appeal, filed June 8, 1935, pages 889 to 891, both inclusive, the original stipulation for purposes of record on appeal, filed August 5, 1936, pages 912-A to 912-C, both inclusive of the foregoing transcript of record, are herewith returned.

I DO FURTHER CERTIFY that in accordance with the praecipès and in obedience to the order of

the Supreme Court of the Territory of Hawaii I transmit herewith the following original exhibits in said cause, to-wit:

PETITIONER'S EXHIBITS:

Exhibit "A-21", Original Deed and Copy of Deed, dated May 10, 1910, executed by John D. Holt, et al, to James Lawrence Holt, and recorded in Liber 337, pages 75-78, Registry of Conveyances, Territory of Hawaii,

Exhibit "C", Map of the Holt Estate Lands showing uses and improvements as of May 2, 1910, traced from Map of W. A. Co., Plantation, Waialua, Oahu. Compared and drawn by John Gomes. Scale: 1"—1000' 1902. Traced by Engineering Office, W. A. Co., Ltd., Jan. 1929,

Exhibit "D-10", Carbon copy of Cablegram in Code and also translation, dated Apr. 8, 1910, addressed to "Withington" Shermipple, Boston, and unsigned,

Exhibit "D-11", Carbon copy of Cablegram in Code and also translation, dated Apr. 11, 1910, addressed to "Withington" Shermipple, Boston, and unsigned,

Exhibit "D-13", Carbon copy of Cablegram in Code and also translation, dated Apr. 12, 1910, addressed to Wikinikona, Shermipple, Boston, and unsigned,

Exhibit "D-15", Carbon copy of Cablegram in Code and also translation, dated Apr. 13, 1910, addressed to Wikinikona, Shermipple, Boston, and unsigned,

Exhibit "D-16", Original Cablegram in Code, dated Apr. 14, 1910, addressed to Ola, Honolulu, and signed "Wikinikona",

Exhibit "D-19", Pencil copy of Cablegram in Code and also translation, dated Apr. 15th, addressed to Wikinekona, Shermipple, Boston, and unsigned,

Exhibit "D-21", Carbon copy of Cablegram in Code and also translation, dated Apr. 16, 1910, addressed to Wikinekona, Shermipple, Boston, and unsigned,

Exhibit "D-22", Carbon copy of Cablegram in Code and also translation, dated Apr. 19/10, sent to Shermipple, Boston and unsigned,

Exhibit "D-25", Original Cablegram in Code with penciled translation, dated Apr. 26, 1910, addressed to Ola, Honolulu, and signed "Lothrop",

Exhibit "D-27", Copy of Cablegram in Code with translation, dated Apr. 28, 1910, addressed to Lothrop, London, England, and unsigned,

Exhibit "D-28", Original Cablegram in Code, dated Apr. 28, 1910, addressed to Ola, Honolulu, and unsigned,

Exhibit "D-29", Original Cablegram in Code with translations, dated Apr. 29, 1910, addressed to Ola, Honolulu, and signed "Husband",

Exhibit "D-30", Original Cablegram, undated, addressed to "Kentwell", 159 Woodstock, Oxford, and signed "Holt",

Exhibit "D. 32", Original Cablegram in Code with translation, dated Apr. 29/10, addressed to

Lethrop, dated Apr. 29/10 addressed to Lothrop, Oxford, and signed "Ola",

Exhibit "D-37", Proposed Agreement, dated Apr. 15, 1910, between James L. Holt, John F. Colburn and William R. Castle, Trustee, and unsigned and unexecuted,

Exhibit "6-A", Book, entitled "Catechism of Christian Doctrine",

Exhibit "15-A", Original General Power of Attorney, dated Jan. 11, 1923, executed by Eliza Holt Christian to Henry Smith,

Exhibit "15-B", Original Power of Attorney, dated Mar. 16, 1923, executed by Eliza Holt Christian to Henry Smith,

Exhibit "R-9", (For Identification),

Exhibit "S-3", Small Map of Waialua Agricultural Co's physical location of properties in the case and adjoining properties as of 2/1/32, showing roads, canals, railroads, etc.,

Exhibit "S-4", Large Map of Holt Lands, showing ditches, siphons, transmission lines, camps, etc., as of Feb. 1, 1932,

Exhibits "1 & 2" in connection with the deposition of Dr. Thomas Saxty Good,

Exhibit being book or pamphlet, entitled, "Scale of Tests", accompanying deposition of Dr. Thomas Saxty Good;

RESPONDENT'S EXHIBITS:

Exhibits 2, 3, 4, 5 and 6 for Identification in connection with testimony of Dr. Masson,

Exhibit "S-9", Book of Photographs,

Map dated March 25, 1935, and marked Exhibit "A",

"Condensed Statement of Evidence, including Court's Order attached thereto approving same, and Order re Certain Exhibits, filed July 24, 1936, and attached thereto—Photostat copy of page with signatures on Exhibit "A-21",

I DO FURTHER CERTIFY that all original orders enlarging time within which to file the statement of evidence and praecipes and docketing said cause, were transmitted to Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, San Francisco, California,

I LASTLY CERTIFY that the cost of the foregoing transcript of record is \$292.60, and the said amount has been paid by Charles M. Hite, Esquire, attorney for petitioner-appellee, and Messrs. Robertson & Castle, attorneys for respondent-appellant equally.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the Supreme Court of the Territory of Hawaii, at Honolulu, City and County of Honolulu, this 25th day of August, 1936.

[Seal]

ROBERT PARKER, JR.,

Clerk of the Supreme Court of the Territory of Hawaii.

[Title of Court and Cause.]

CONDENSED STATEMENT OF EVIDENCE

Filed July 24, 1936 at 2:12 o'clock P. M. Gus K. Sproat, Deputy Clerk Supreme Court.

The following is the condensed statement, in narrative form, of the testimony introduced upon the trial on behalf of the Petitioner, Eliza R. P. Christian, an incompetent person, by Herman V. von Holt, her Guardian, and Respondent, Waialua Agricultural Company, Limited, (both of said parties appealing herein), as approved and settled by the Supreme Court of Hawaii, pursuant to stipulation of the said parties filed contemporaneously herewith that only one statement need be so approved, settled and filed.

PRELIMINARY STATEMENT OF PROCEEDINGS

The taking of testimony in this case commenced in Honolulu before the Circuit Court of the First Judicial Circuit, Territory of Hawaii (Judge Cristy presiding), and was concluded on March 11, 1929. Decision was rendered in favor of the Petitioner on May 11, 1929, which decision, among other things, called for an accounting. This accounting was had before Judge Cristy and a decision thereon rendered August 9, 1929. The decree in the Circuit Court was entered October 16, 1929. Petitioner did not appeal.

From this decree the Respondent Waialua Agricultural Company, Limited, appealed to the Supreme Court of Hawaii. The decision of the Ha-

waiian Supreme Court was rendered April 18, 1931 (31 Haw. 817), affirming the decree in part and reversing the decree in other respects. On such decision of the Supreme Court of Hawaii, an Order Remanding Cause was entered May 21, 1931.

Respondent Waialua appealed to this Court from the Order Remanding Cause, the appeal being dismissed on September 18, 1931, on the ground that said Order Remanding Cause was not a final order (52 Fed. (2d) 847).

After the pleadings had been amended in accordance with the Order of Remand of the Supreme Court of Hawaii, further trial was had in the Circuit Court of the First Judicial Circuit, Territory of Hawaii, resulting in the decision of said court (Judge Cristy presiding) of August 18, 1932, on which a decree was entered September 6, 1932.

From this decree Respondent Waialua appealed to the Supreme Court of Hawaii. Petitioner did not appeal. The said court rendered its decision on May 3, 1934 (33 Haw. 34), and a decree was thereafter entered from which both parties appealed to this court.

Certain facts stipulated to by counsel during the trial or shown by the testimony of witnesses, and not now nor heretofore disputed, may be briefly stated as follows and will not hereafter be duplicated in this narrative statement:

THE PROPERTY INVOLVED

Eliza Holt (Eliza R. P. Christian, the Petitioner) is the daughter and only child of John Dominis Holt

and a granddaughter of Robert William Holt. The property, subject matter of this litigation, is property originally owned by the said R. W. Holt and passing under the terms of his will.

R. W. Holt, an Englishman and grandfather of Petitioner Eliza R. P. Christian as aforesaid, died in Honolulu in 1862. He came to Hawaii many years before with one child (a daughter of a former marriage) and here married a native Hawaiian woman by whom he had three sons. He left him surviving these four children, namely, John Dominis Holt (the father of Petitioner), James R. Holt, Owen J. Holt and Elizabeth M. Aldrich. The applicable part of his will provided:

"I give, devise, and bequeath to my son, John Dominis Holt, one quarter of all my estate, both real and personal the income of the same to be paid to him by my Executor hereinafter named for his use and support for the term of his natural life and after the death of my said son, I give, devise and bequeath the said one quarter to the heirs of the said John Dominis Holt and their assigns."

Similar provision was made for the other sons, the daughter Elizabeth M. Aldrich being given her one-quarter outright. After the payment of debts and legacies, and the distribution of the one-quarter to the daughter, Elizabeth M. Aldrich, there was left in the estate, among other properties, the property involved in this litigation, being certain lands in the district of Waialua, Oahu, consisting of approxi-

mately 14,000 acres, hereinafter called the "Holt Lands." These lands are a large wedge-shaped piece, as appears from the maps in evidence, starting at an elevation of some 20 feet and running in a general westerly direction for about eight miles up to an extreme elevation of 1616 feet on the slopes of the Koolau mountain range, and include sugar, pineapple, forest and waste lands.

Each of the sons, including John Dominis Holt, under the terms of the will, had a life estate in one-third of this property (as well as other property left by R. W. Holt as above indicated), the remainder as to each one-third being in the heirs of the respective sons, as indicated by the language above quoted from the will.

The family relationships are illustrated by the following diagram:

R. W. HOLT			
Died 1862			
OWEN J. HOLT	JAMES R. HOLT	JOHN DOMINIS HOLT	
Born Dec. 10, 1842	Born Oct. 17, 1838	Born Dec. 17, 1839	
Died June 10, 1891	Died Apr. 18, 1916	Died Apr. 10, 1922	
9 children	ROBERT HOLT	JAMES L. HOLT	ELIZA CHRISTIAN
ROBERT W. HOLT	Born	Born	Born
EDWARD S. HOLT		Nov. 1873	Dec. 30, 1885
CHRIS HOLT	Died 1918		
GEORGE H. HOLT			
JAMES R. HOLT, JR.			
JOHN D. HOLT, JR.			
OWEN J. HOLT, JR.			
ELIZABETH H. RICHARDSON			
ANNIE HOLT KENTWELL			

Each son of R. W. Holt had a life estate in one-third of the property. On the death of each son, the heirs of that son became the owners of the fee simple title to the particular one-third.

The first son to die was Owen J. Holt, who died on June 10, 1891, leaving the nine children above named. Thereupon each child became vested with a 1/27 interest in fee simple in these lands. James R. Holt was the next son to die. He died April 18, 1916, whereupon the title in fee simple to his one-third vested in the assigns of his heirs. John Dominis Holt, the father of petitioner *Eliza R. P. Christian*, was the last to die. He died April 10, 1922, and the fee simple title to his one-third thereupon vested.

THE PETITIONER

Eliza Holt (*Eliza R. P. Christian*, the petitioner) was born December 30, 1885, at Makaha, Waianae, Oahu. She is a daughter of John Dominis Holt, and of Kaahanui, a Hawaiian, his wife, and a granddaughter of R. W. Holt. Her mother died when she was about seven years old. She was brought to Honolulu in the early nineties by her father.

For five years, from eight to thirteen years of age (1894-1899), she attended school at the Catholic Convent in Honolulu and boarded there. Prior to that, in 1893, she had been given piano lessons at the Convent. After leaving the Convent and a year's interval in Honolulu, she spent a year with her cousin Annie Holt (Kentwell), in attendance at a Catholic Girls' School at San Jose, California, Notre Dame Convent. On her return to Honolulu she

was enrolled at the Priory (an Episcopal girls' school), from which she was required to withdraw before completing the term, by reason of giving birth to an illegitimate child. This was in 1902, and she was then sixteen years of age. A prosecution for rape in which she was the prosecuting witness was instituted, and her testimony is in evidence (Ex. 4).

Eliza Holt and her father went to live with her cousin Annie (Holt) Kentwell in July 1901, and lived with her from that time on, except for the time of her marriage, and a period of some six months with the Seas in Honolulu.

On January 26, 1903, Eliza Holt, then seventeen years of age, married Albert Christian in the Catholic Cathedral in Honolulu. The marriage ceremony was performed by the Reverend Father Clement, and the witnesses were Mamie Christian and John D. Holt, father of petitioner. Albert Christian's age is given as twenty-three in the marriage certificate, and his nationality Dane-Scot. The license for the marriage was duly issued and the record of the marriage with, among others, the foregoing facts, was duly recorded in the official record of marriages for Honolulu on February 26, 1903 (Ex. 8), the record likewise showing that John D. Holt, the father, consented to said marriage. After living with her husband for a few months, Eliza Christian returned to live with Annie Kentwell. Thereafter she never lived with Christian again, nor were they ever divorced. He died in 1919.

An action in the Circuit Court of the First Judicial Circuit (in Honolulu), entitled "Eliza R. P.

Holt, a Minor, by Annie Holt Kentwell, her Relative and Guardian, Plaintiff, vs. Albert Christian, Defendant," instituted to annul Eliza Christian's marriage upon the claim that she was a congenital imbecile and mentally incompetent to contract marriage, and upon the further ground that the marriage was part of a conspiracy to obtain her property, was decided adversely to those contentions on March 4, 1905, Judge Gear of such Circuit Court, who heard the case, rendering an opinion refusing the annulment (Ex. 7).

In 1906, when Eliza R. P. Christian was twenty, she and her father left Honolulu for the mainland, with the Kentwells. For a short time they resided at Cambridge, Massachusetts, and then removed to Elizabeth, New Jersey, where they remained until 1909. While living with the Kentwells in Elizabeth at this time, a second illegitimate child was born to her. The child was born on an elevated railway platform while Mrs. Christian was on her way to a hospital in New York City. During this period Lawrence Kentwell pursued his studies at the Law School of Columbia University, receiving the degree of L.L.B. in June 1909.

The family then removed to Oxford, England, where Lawrence Kentwell continued the study of law, receiving the degree of B.A. in law in 1912 from Oxford University. He spent the next two years at Kings College, Cambridge University, and was called to the Bar in 1916.

Eliza R. P. Christian, with her father, continued to live with the Kentwells at Oxford. In 1915 her

third illegitimate child was born in a nursing home in London. This child is living in England. John Dominis Holt died on April 10, 1922, at Oxford. Eliza R. P. Christian has remained a member of the Kentwell household in Oxford. Lawrence Kentwell went to Shanghai, China, in 1919, and has remained there since.

In 1926 Eliza R. P. Christian was declared incompetent by a British Court, at the instance of Annie Kentwell, who was appointed receiver of her property in England.

On February 1, 1927, upon petition of George H. Holt, she was declared an incompetent by the First Circuit Court in Hawaii, and George H. Holt was appointed her guardian. Waialua was not a party to either the English or Hawaiian proceedings. On April 5, 1928, written demand was first made on Waialua, and on May 8, 1928, this action was commenced.

WAIALUA AGRICULTURAL COMPANY

Waialua Agricultural Company, Limited (for convenience called Waialua), is a Hawaiian corporation, incorporated October 12, 1898, to engage in the business of growing sugar cane and manufacturing the same into sugar. Upon its incorporation it took over the old Halstead plantation, a comparatively small plantation operating more particularly on the lower levels in the Waialua district. From time to time it acquired, by lease or purchase, additional contiguous lands, constantly enlarging its operations, the largest lease in the early days being

the first lease from the Bishop Estate of the Kawai-loa lands (Ex. 5-J). The Holt lands adjoined the Kawailoa lands and were contiguous to other Waialua lands, and as early as 1900 the lands owned or controlled by Waialua surrounded the Holt lands, except in the upper forest portion. The Holt lands, from the time of the incorporation of Waialua until its lease later by Waialua, were wholly uncultivated.

On March 17, 1905, Waialua leased these lands for a period of twenty-five years from April 1, 1905, to April 1, 1930 (Ex. A-8), at a rental of \$9,000 per annum. This lease was duly recorded on April 6, 1905, and is in evidence as Petitioner's Exhibit A-8.

On April 1, 1905, Waialua entered upon the lower tip of the Holt lands, started clearing the rocks, klu and guava, and has developed this property systematically ever since.

CERTAIN EXHIBITS AND FACTS ADMITTED BY STIPULATION AFFECTING TITLE AND INTERESTS IN THE "HOLT LANDS."

Certain exhibits and facts relating to interests, real and personal, in or in connection with the "Holt lands," were admitted in evidence by stipulation in the early part of the trial. The designation "Holt lands" refers to the lands a part of the R. W. Holt estate. The interest of Eliza R. P. Christian in these lands is the subject matter of this suit. The use of the word "recorded" throughout means recorded in the Hawaiian Registry of Conveyances in Honolulu, the official office of record for the Terri-

tory of Hawaii. The following are the exhibits and facts referred to, arranged largely in chronological order:

In the original hearings Petitioner's exhibits were designated by letters such as "E" or "A-8," and Respondent's by numbers such as "8" or "1-B"; at the accountings hearings all exhibit letters or numbers were prefixed by "AC," Petitioner likewise retaining the letters, such as "AC. B-1," and Respondent the numbers, such as "AC. 9"; and at the trial on remand Petitioner's exhibits were prefixed by the letter "R", as "R-1," and Respondent's by the letter "S", as "S-5."

1. By deed dated May 18, 1893, James L. Holt purchased of his brother Robert Holt all of grantor's (Robert's) interest, present or expectant, in all of the estate and property of grantor's father, James Robinson Holt, and also grantor's interest in the estate of his grandfather R. W. Holt, deceased. Release of dower by Hokela Holt, grantor's wife. Deed duly recorded. (Ex. 2-B)

2. By mortgage dated December 14, 1897, James Lawrence Holt and Lena Holt, his wife, mortgaged to W. R. Castle, Trustee, for a consideration of \$2500, payable three years from date, all their interest in the property, premises and effects in the estate of his grandfather, R. W. Holt, deceased. Mortgage duly recorded. (Ex. 2-A.)

3. Waialua in 1899 purchased of Robert W. Holt, son of Owen J. Holt, for a consideration of \$11,000, his 1/27 interest in the Holt lands, except-

ing his interest in Grant 973. The deed likewise covered the grantor's interest in Grant No. 1092 coming independently from the Owen J. Holt Estate, not a part of the Holt lands.

(By inadvertence, this deed was omitted, but the fact is set forth in the testimony of W. W. Goodale.)

4. By deed dated June 7, 1900, Waialua purchased of Christopher J. Holt, for a consideration of \$20,000, his 1/27 interest in the Holt lands. The deed conveyed, as well, grantor's interest in Grant 1092, not a part of the Holt lands. Release of dower by Emma Holt, grantor's wife. Deed duly recorded. (Ex. A-7.)

5. By deed dated March 16, 1901, James L. Holt purchased of James R. Holt, his father, all grantor's right, title and interest of every nature and kind, in and to the various lands belonging to the R. W. Holt Estate. Release of dower by Rosalia M. K. Holt, grantor's wife. Deed duly recorded. (Ex. 2-C.)

6. By agreement dated March 16, 1901, between James L. Holt and his father, James R. Holt, and his (the father's) wife, Rosalia M. K. Holt, James L. Holt agreed to pay to his father and his father's wife 50% and 25% respectively of whatever net sum of money might be realized as income from the properties set forth in Exhibit 2-C, during the term of their natural lives. Agreement duly recorded. (Ex. 2-D.)

7. By deed dated July 1, 1902, James L. Holt purchased of James R. Holt, his father, and John

Dominis Holt, his uncle, in consideration of one dollar, love and affection, all of their interests of whatsoever nature, in the estate of R. W. Holt, including the Holt lands (the same being life interests). By this same document James L. Holt was created their attorney-in-fact. Release of dower by grantor James R. Holt's wife. Deed duly recorded. (Ex. A-17.)

8. By agreement dated July 1, 1902, James L. Holt, in consideration of the conveyance made under deed of even date (Ex. A-17 above) agreed to pay to his father, James R. Holt, and to his uncle, John D. Holt, certain weekly sums for life, beginning at \$25 per week in the event that the value of the property conveyed, after sale and the collection of the proceeds thereof, should exceed the sum of \$100,000, and increasing to the sum of \$50 each per week should the value exceed the sum of \$200,000. It was recited in the agreement that the properties were of great but unknown or uncertain value; that it was the hope, desire and expectation of the parties that James L. Holt would take such measures as would greatly increase said value and that he would and might convert the same into cash or other securities, and invest and hold the reinvested proceeds for his own interests and that of his said father and uncle as in this instrument expressed. It was further recited that the sole heir of John D. Holt was Eliza R. P. Holt, and that upon the death of her father, James L. Holt should

convey to her, or her issue surviving her father if she predeceased her father, one-half of all property which might then be under his control by virtue of the conveyance (Ex. A-17). The instrument further provided for weekly payments of \$25 after the death of James R. Holt to his widow (mother of James L. Holt) during her life or until remarriage. This agreement was signed and acknowledged by James L. Holt, but not recorded. (Ex. 2-E.)

9. By trust deed dated July 1, 1902, James L. Holt conveyed to John F. Colburn, Trustee, all of the interests of his father, James R. Holt, and his uncle, John Dominis Holt, in the R. W. Holt estate, each having a life interest in 1/3 of said estate and in the Holt lands, upon certain conditions and trusts. The instrument reads as follows:

THIS INDENTURE executed this first day of July, in the year of our Lord one thousand nine hundred and two, by and between JAMES LAWRENCE HOLT, hereinafter called the Grantor, party of the first part, and John F. Colburn, hereinafter called the Trustee, party of the second part, both of the City of Honolulu, Island of Oahu, Territory of Hawaii:

WHEREAS, by a certain instrument of even date herewith executed by JAMES ROBINSON HOLT, father of said Grantor, and JOHN DOMINIS HOLT, the Elder, uncle of said Grantor, and Lokalia Kahalaoaka Holt, the wife of said JAMES ROBINSON HOLT, and mother of said Grantor, there is conveyed

to said Grantor all and singular the property, rights, titles, equities, etc., etc., which have heretofore belonged or pertained to or been claimed by them, the said James Robinson Holt and John Dominis Holt, or either of them as a part of the estate left by their father, Robert W. Holt, deceased, and which pertained to them respectively or either of them under and by virtue of the Last Will and Testament of their said father, and

WHEREAS, therefore, to-wit, on or about the 16th day of March, A. D. 1901, said James Robinson Holt and his said wife, did by written instrument of record in Liber 222 on page 71 of the Hawaiian Registry of Deeds, in said Honolulu, convey to the said Grantor, all and singular the rights of him, the said James Robinson Holt in and to all of the real estate left by his said father, Robert W. Holt, under the terms of said Will, and

WHEREAS, by virtue of the two instruments of conveyance last aforesaid, the said Grantor is now the owner of all and singular the rights, properties and equities which prior to the execution and delivery of said instruments of conveyance, were owned or pertained to them, the said James Robinson Holt and John Dominis Holt, or either of them, in or under the estate of their said deceased father, or by virtue of the said Last Will and Testament of their said deceased father, and

WHEREAS, in partial consideration of the said conveyances to him, the said Grantor has executed to them, the said James Robinson Holt and John Dominis Holt, an instrument bearing even date herewith, wherein and whereby he, the said Grantor, makes certain covenants and assumes certain obligations for the payment to them, the said James Robinson Holt and John Dominis Holt, of certain sums and allowances for their maintenance during their respective lives, and has made certain other covenants and assumed certain other obligations in regard to the payment and delivery by him, said Grantor, of certain sums of money or property to Eliza R. P. Holt or her issue, in the event that she or her issue shall survive the father of said Eliza R. P. Holt, namely, John Dominis Holt aforesaid, and

WHEREAS, it is the intent and purpose of the parties hereto that all and singular the properties, rights and equities conveyed to said Grantor by either or both of the instruments of conveyance hereinabove mentioned as having been executed to him by his said father and mother, or by his said father and mother and uncle, or any or either of said instruments, shall be conveyed upon the trusts herein expressed, to said Trustee, and that the conveyance thereof by said Grantor to said Trustee, shall be as full, complete and effective as though said above recited instruments of conveyance had been made

directly to said Trustee instead of to said Grantor herein named.

NOW THEREFORE, This Indenture Witnesseth:

THAT said Grantor for and in consideration of the premises and of the covenants and agreements in this instrument expressed as on the part of the said Trustee, his heirs, executors, administrators, assigns and successors in Trust herein to be kept performed and executed, and of One Dollar (\$1.00) to him paid by said Trustee, the receipt whereof is hereby acknowledged, hath bargained and sold, and doth by these presents grant, convey, confirm, release, remise, assign, transfer, set-over and deliver unto the said Trustee, all and singular the real estate, choses in action, goods, chattels, effects, rents, issues, profits, remainders, reversions, rights, titles, claims and equities of whatever name or nature and wheresoever situated, which are conveyed to him, said Grantor, in or by either or both of the instruments of conveyance hereinabove named, to-wit: the instrument executed by the said father and mother of said Grantor to said Grantor, the 16th day of March, A. D. 1901, of record in the Hawaiian Registry of Deeds aforesaid, in liber 222, on page 71, and also the instrument of even date herewith executed to said Grantor by the said father and mother and uncle of said Grantor.

TO HAVE AND TO HOLD all and singular

the premises, real estate, choses in action, goods, chattels, effects, rents, issues, profits, remainders, reversions, rights, titles, claims and equities hereinabove conveyed or intended to be conveyed, unto the said Trustee, and his heirs, executors, administrators, successors in trust, and assigns forever.

BUT in trust nevertheless for the uses and purposes hereinafter expressed and stipulated, that is to say.

1. To reduce to his, said Trustee's, possession and control, in any manner or manners provided or permitted by law, the premises, property, real estate, claims, goods, chattels and effects herein conveyed or intended so to be, and thereafter and during the life of this trust, and subject to the terms thereof to hold, manage, control, sell, mortgage and dispose of the same, and after such sale or mortgage or disposition, to hold, manage, control, apply and dispose of the proceeds or results of sales, mortgages or dispositions in manner as herein provided.

2. And whereas, it is now claimed and asserted by Henry Smith, Esquire, who is now acting as Administrator, with-the-Will annexed, or as Trustee, or otherwise, in a fiduciary character by appointment of the Circuit Court for the First Circuit in and for said Territory, acting or purporting to act under the terms of

the Last Will and Testament of said Robert W. Holt, that a trust exists in favor of said Henry Smith, by virtue of the said Last Will and Testament and of his appointment as aforesaid, in, of and over all and singular the property and property rights and interests which pertain to them, the said James Robinson Holt and John Dominis Holt, under and by virtue of said Will,

AND WHEREAS, further, he the said Henry Smith; under such claim and appointment as aforesaid, has in his possession and control a large sum of money, or securities representing such money, or both such money and securities, and also claims to be in possession of all of the real estate now belonging or appertaining to the estate of the said Robert W. Holt, which said money, securities and real estate or part thereof, or certain undivided interests therein constitute the subject of this conveyance,

NOW THEREFORE, said Trustee shall be at liberty, and he is hereby expressly authorized and directed to take such measures, either by way of suit or suits at law, bill or bills in equity, or otherwise, as in his discretion shall be or appear expedient, to test the validity of the said claim of said Henry Smith Esquire and of any and all other persons claiming or to claim any of the property or rights which are the subject of this conveyance, adversely to the claim of

said Trustee to the same or to any of them, and in that connection, and for that purpose, to bring and maintain and prosecute to final judgment, decree and execution any and all actions at law, in equity or otherwise, which in the discretion of said Trustee, or his successors in interest herein, of any or all of the property and property rights, in and by this instrument conveyed or intended to be conveyed unto said Trustee.

3. To invest and re-invest and keep invested in secure investments such money as shall come to his (said Trustee's) hands or control by virtue of this instrument, and to change such investments at his discretion.

✓ 4. To hold, manage and control such securities and representations of money as reach his hands by virtue hereof, and to collect the interest and income thereof, and to sell, exchange or otherwise dispose of the same, in his discretion and to account for the income and proceeds thereof.

5. To hold, manage and control all real property, or mixed property, and all rights, privileges and easements pertaining thereto, which shall come to his possession or ownership by virtue hereof, and in his discretion to make and execute such lease and leases thereof, or of any part or parts, portion or portions thereof, as, in his judgment may or shall be or appear expedient, and upon such terms, and for

such rentals as to him shall appear proper and expedient, provided that no such lease shall be made for more than fifty years.

6. To sell and dispose of in such manner and for such price, and upon such terms as to him (said Trustee) shall be or appear expedient, any or all of the real estate, or (and) of the rights, easements or privileges in any-wise pertaining to any of the real estate herein and hereby conveyed or intended to be conveyed, or to exchange the same, or any part or portion of the same, for other real estate, either in whole or in part, and to hold, manage, control and invest the proceeds of any such sale or sales, exchange or exchanges, as hereinabove provided.

7. It is especially hereby intended and provided that such power to convey and dispose of real or personal property hereunder, shall include the authority to make such, or any such conveyance or disposition to any corporation or corporations which shall be organized for the purpose, (either solely or principally) of receiving such conveyance, and of managing and controlling the property so conveyed, or any part thereof, or any other corporation, and upon any such conveyances or disposition to such corporation, said Trustee shall be authorized in his discretion, to accept payment therefor, either in whole or in part, in the paid-up shares of the capital stock of such corporation

or corporations, and thereafter to hold such shares of capital stock upon the trusts herein expressed.

AND WHEREAS, in and by that certain instrument of covenant and agreement, bearing even date herewith, which has been executed to them, the said James Robinson Holt and John Dominis Holt by said Grantor, it is provided among other things, that he, said Grantor, shall pay and cause to be paid to said James Robinson Holt, and John Dominis Holt, and to each of them on the Monday of each week during their respective natural lives, the sum of Twenty-five dollars (\$25.00) in United States Gold Coins, or such greater sum or sums as shall, under the conditions in said instrument expressed, become or be due and payable to them in the premises.

NOW, THEREFORE, said Trustee doth hereby covenant and agree, as well to and with said James Robinson Holt and John Dominis Holt, as with the said Grantor herein, that he, said Trustee, upon the execution and delivery to him of this indenture, will effectively provide for the payment of, and will well and truly pay and continue to pay and cause to be paid during the continuance of this trust, the said several weekly sums so, in said last recited instrument, agreed and covenanted to be paid to said James Robinson Holt and John Dominis Holt, and to each and either

of them, he, the said Trustee, rendering an account of all such payments, at intervals of not more than six months, to said Grantor, and his assigns herein.

AND said Trustee doth further covenant and agree to and with the said Grantor, and his personal representatives and assigns in the premises, as follows:

(A) THAT he, said Trustee will well and truly exercise his best efforts and judgment, and will continue in the vigilant endeavor to reduce to his control and possession all and singular the property rights and benefits, the rents, claims, demands and credits of every name and nature to which said Trustee is entitled by virtue of this instrument.

(B) THAT he will, with a view to the legitimate interest of all parties concerned, and especially of said Grantor, hold, manage, control, sell, dispose of, invest, re-invest and change the investments of any and all moneys, funds, securities and other property whether real, personal or mixed, which shall come to his hands by virtue of this instrument, and will faithfully, and at stated intervals of not more than six months, account to said Grantor, for and in respect of all such property, investments and receipts, and the disposition thereof.

(C) THAT he will be vigilant and energetic in the investigation of the rights and titles hereby conveyed or intended to be conveyed,

and that he will promptly and energetically, and in every manner, and to the utmost extent provided by law, enforce each and all of such rights and titles by proceedings in Court, or otherwise, as shall seem most expedient, it being understood, however, that he, said Trustee shall be at liberty to select such counsel, learned in the law, as he shall from time to time see fit, to advise him in the premises, and to conduct or defend any suit or suits in law or in equity that arise in the course of the administration of this Trust, and that while in good faith following the advice or relying upon the services of such counsel in the premises, he, said Trustee, shall for the purposes of this Trust, and of his accountability hereunder, be held and considered to have proceeded and acted herein, in all respects legally and according to the true intent and purpose hereof.

(D) THAT he will, at his own proper cost and charge, pay and discharge the legal and professional fees of such counsel as he shall employ herein, without charge to said Grantor.

(E) THAT he will, in particular, manage, control, deal with, rent, sell and dispose of the real estate and real interests hereby conveyed to the best and utmost of his ability and judgment, and will promptly and faithfully render to said Grantor full and true reports and accounts of such transactions and control, and will faithfully invest and re-invest, keep in-

vested and in his discretion charge the investments of all proceeds of such control or dispositions.

(F) THAT he will effectively provide and furnish, advance and pay all sums of money which shall, in his discretion, become or be necessary for the best and most effective carrying out of this trust, including such weekly stipends to said James Robinson Holt and John Dominis Holt, also all necessary Court costs and expenses, the cost of the inspection of or surveying of lands or premises, recording of instruments, etc. etc. as shall, in his discretion, appear expedient. It being understood that said Trustee is hereby vested with all controlling discretion in this regard, and that any and all sums that he shall, in good faith, pay or agree to pay hereunder (except as provided in paragraph "D" hereof), shall be a valid charge and credit in his favor herein.

(G) THAT he doth hereby accept and assume and covenant and agree faithfully to execute all other the conditions of this trust, as herein expressed, and on his part to be performed, whether the same are specifically enumerated in the six paragraphs hereof next preceding this paragraph, or are elsewhere herein expressed.

AND the said Grantor, in further consideration of the premises, and for the more effectual carrying out of the purpose of this Trust, doth

hereby further covenant and agree to and with the said Trustee, that he, said Grantor, will pay and allow said Trustee, to retain from such funds and property as shall come to his possession by virtue hereof, a compensation for his said Trustee's services herein, as follows:

FIRST: For and in respect of the moneys and securities of a personal and portable character, to-wit: of the sum or value of Twenty-seven Thousand Dollars (\$27,000.00), or thereabouts, (or such lesser sum or proportion thereof as shall belong or pertain to said Trustee by virtue of this conveyance,) now under the control of said Henry Smith, by virtue of the facts hereinabove recited, no fee or commission upon its income or earnings which shall reach the hands of the said Trustee.

SECOND: Upon and in respect of all and singular the balance of the property and property rights hereby conveyed, whether real, personal or mixed, said Trustee shall receive and be entitled to retain and said Grantor doth covenant and agree to pay, convey and deliver to said Trustee, discharged of this trust, a sum and sums of money, and a proportion of said property other than money during the administration of this trust, (a) with respect to such money as shall constitute a part or the whole of the corpus of the estate and property herein conveyed, or to which such estate and property, or any part thereof, shall be converted, one-quarter, to wit: twenty-five percent thereof,

(b) with respect to any and all securities, shares of capital stock in corporations, notes, bonds, mortgages, etc., one-quarter in value of the whole thereof, each series or lot thereof, so far as practicable to be divided between said parties in the proportion of three-quarters thereof to said Grantor, and one-quarter thereof to said Trustee, (c) with respect to any and all real estate, or chattels, real, or rights pertaining thereto that shall not be reduced to cash or portable securities during the administration of this Trust, one-quarter of the whole, or the entire value of the whole thereof, provided, that in case of any failure of the parties hereto or of their representatives in the premises, to agree upon such division, appraisers of such property so to be divided between the parties hereto may be appointed one by each party hereto, or his representative, and a third by the two so appointed, and the three appraisers so appointed shall by either award, to be signed by any two of them, assign to and between the parties hereto, and their respective successors in interest, such real estate, chattels real, and rights pertaining thereto as aforesaid, in the proportions of three-quarters in value thereof to said Grantor, and one-quarter in value thereof to said Trustee, and the expenses of such appraisement and division shall be borne by the parties hereto, and their respective successors in interest, in the proportion last aforesaid.

AND it is mutually understood and agreed between the parties hereto, that all sums prop-

erly chargeable against and upon this trust, under the terms of the paragraph of this instrument marked "F" shall be first paid and discharged, or the payment thereof provided for from and out of the said trust funds, and also that said Trustee shall retain out of the same a general administrator's commission of five percent (5%) upon all sums which shall be or shall have been received and disbursed by him on account of said trust, (and other than the sum referred to in the paragraph numbered "First" hereof), before the division of said Trust Estate between the parties hereto as contemplated in and by the next preceding paragraph hereof numbered "Second."

AND it is further expressly understood and agreed by and between the parties hereto, that, whereas, said Trustee has hereby obligated himself to perform and cause to be performed the several covenants of said Grantor to said James Robinson Holt, John Dominis Holt and Eliza R. P. Holt, as in said instrument of covenant and agreement bearing even date herewith, expressed, a control of said trust funds, or sufficient thereof to enable him to respond to said obligation, is essential to his security, during and throughout the period of trust hereby contemplated.

THEREFORE, and in order to the effective carrying out of said covenants, by both of the parties hereto, said Trustee, upon selling said trust property, or any thereof, and receiving

the price or proceeds of the same, shall thereafter retain in hand for investment and reinvestment by him, such proportion and so much thereof as, computing interest thereon (if it be money or property readily convertible into money) at the rate of six per cent per annum, will yield sufficient to pay and discharge not only the general commission of five per cent, provided for in paragraph numbered "Second" hereof, but also sufficient to pay the incidental costs of the administration and maintenance thereof, and the payment of taxes and other charges of a fixed nature, but, in addition thereto, sufficient to provide for any and all payments of weekly stipends to said James Robinson Holt and John Dominis Holt, and each and either of them, as provided by the said covenants of said James Robinson Holt or John Dominis Holt, the portion of said trust property theretofore retained by said Trustee for the purpose of providing funds for the payment of the weekly stipends of such deceased, shall be as early as may be thereafter delivered by said Trustee to said Grantor, or his successor in interest, he, said Trustee, continuing to retain sufficient thereof to meet the charges which shall then still exist, by reason of said covenants of said Grantor.

Provided, However, that in the event of death of said John Dominis Holt, while said Eliza R. P. Holt, or any of the issue of said Eliza R. P. Holt, survive, said Trustee shall convey, pay or deliver to said Eliza R. P. Holt, or to

her issue, (she being dead) or to the personal or legal representative of either, a sufficient sum of money, or sufficient of the property of said trust, to fully comply with the terms of the covenant and obligation of said Grantor to said Eliza R. P. Holt, and her issue, as expressed in the said instrument of covenant and agreement so executed by said Grantor of even date herewith, as aforesaid,

PROVIDED, however, that nothing herein shall be construed to oblige said Trustee to deliver to said Grantor any portion of the property pertaining to this trust, the delivery whereof would or reasonably might leave said Trustee without sufficient means to adequately protect him in the premises, and enable him to effectively discharge, from the income of said trust property still to remain in his hands, the covenants so, as aforesaid, made by said Grantor, and assumed by said Trustee, and which shall then remain unfulfilled.

AND upon the death of the Survivor of said James Robinson Holt and John Dominis Holt, and further upon the conveyance, payment or delivery by said Trustee to said Eliza R. P. Holt, or her issue, or the legal representative of either, of the property or money necessary to effect a compliance with the said Grantor's said covenant in the premises this trust shall be determined and extinguished by the conveyance, payment and delivery by said Trustee, or his successors in trust herein, to said Grantor, or

his successors in interest herein, of all money and property which shall then remain to the credit of said trust funds, after payment out of said fund, of the commissions, general and special, and all other charges and expenses herein provided for.

It is further provided, that said Trustees may at any time hereafter resign from said trust, and so determine his liability hereunder, by appointing, (with the written consent of said grantor or his successor in interest,) a successor or successors herein, and by fully accounting to said Grantor, or his successor in interest, for all money and property pertaining to said trust, up to the time of such resignation.

AND in the event of the death of said Trustee, while still holding such trust, such person or persons shall succeed thereto as said parties shall, in the meantime, by separate writing agree upon for such purpose, and any such successor or successors shall have all the privileges and assume all the obligations herein bestowed or imposed upon the Trustee named in this instrument.

It is a further provision of this instrument, that no purchaser from said Trustee of any of the property hereby conveyed, or intended to be conveyed shall be in anywise answerable for or chargeable with the proper, or any, application of the money or property given, or which shall be given by such purchaser in payment or exchange for the property, or any of the prop-

erty so purchased by him. And, in like manner, no lessee of said property or any part or portion thereof, shall be answerable for the application by said Trustee of the money or property paid, or which shall be paid as rental for any property so leased.

AND said Trustee shall be at liberty to accept from the heirs of the late Owen J. Holt, deceased, or from any of them, (who are in somewise amicably interested with said Grantor in and under the said Will of Robert W. Holt), such, and so many agreements for said Trustee to represent their or any of their interests in the premises, as he, said Trustee, shall see fit, and shall think compatible with his own interest and interests of said Grantor, and no compensation which said Trustee shall agree for and receive from any of said heirs shall in any event be chargeable to him as a set-off or otherwise in favor of said Grantor hereunder.

IN the event that the rents, issues and profits of the property and rights hereby conveyed shall exceed the sum required for the payment of said weekly stipends, and all other, the expenses and outgo herein provided for, then such surplus shall, at periods of not more than six months be paid by said Trustee to said Grantor, or his assigns.

• AND WHEREAS, in and by said instrument of covenant and agreement, said Grantor has assumed the further obligation to pay and cause to be paid to his mother Lokalia Kahalao-

aka Holt, wife of his said father, from and after the death of his said father, and thence during her natural life, (or during such lesser period as she shall remain the widow of her present husband, and sole and unmarried,) the sum of Twenty-five Dollars (\$25.00) per week.

NOW THEREFORE, said Trustee doth hereby, in addition to all other obligations on his part hereinbefore expressed, assume the performance and fulfillment of said last mentioned obligation of said Grantor, and it is mutually agreed that the trust hereby created may and shall continue until such obligation is fully performed, and said Trustee and his successor and successors in said trust property, and of the proceeds thereof, to enable him and them to effectively discharge said covenants and obligation toward her, the said Lokalia Kahalaoaka Holt, from and out of the income thereof, anything contained or expressed in any other part or paragraph of this instrument to the contrary notwithstanding.

AND I, Lena Steineck Holt, wife of said Grantor, in consideration of the premises, and of the sum of one dollar, (\$1.00) to me paid by said Trustee, the receipt whereof is hereby acknowledged, do hereby release to said Trustee his successors and assigns, all and singular my right and possibility of dower in any and all the property whether real or personal, conveyed or intended to be conveyed, in and by the foregoing instrument.

IN WITNESS WHEREOF, the said parties of the first and second parts, and the said wife of the said party of the first part, have hereunto set their hands and seals, at Honolulu aforesaid, the day and year first herein above written.

JAMES LAWRENCE HOLT (Seal)

JOHN F. COLBURN (Seal)

LENA STEINECK HOLT (Seal)

Signed, sealed Executed and Delivered in the presence of

C. W. ASHFORD.

(Acknowledgment Clause)

Trust deed duly recorded. (Ex. A-18.)

10. By agreement dated March 4, 1905, between James L. Holt and John F. Colburn, the trust agreement of July 1, 1902 (Ex. A-18 next above), was modified in part as follows:

"AND WHEREAS, the experience of the parties hereto, under said last recited instrument, during the period which has elapsed since its execution, has suggested the wisdom of some modification and alteration of the general plan of disposition and control of the interests aforesaid on the part of the said TRUSTEE, and, in particular has suggested and now suggests the expedience of leasing the realty and real interests in said recited instrument referred to and contemplated, instead of effecting an immediate or early sale thereof, or partition thereof among the persons legally entitled thereto, or otherwise as is in said instrument especially contemplated,

"NOW, THEREFORE, this AGREEMENT WITNESSETH:

,"That said Agreement of July 1, 1902, is hereby modified and extended, so that, if said TRUSTEE SHALL effect and procure to be executed a lease or leases of said realty, or of any part thereof, and of the interests therein conveyed by said last recited instrument to WAIALUA AGRICULTURAL COMPANY, LIMITED, or other responsible tenant or tenants which said proposed lease or leases shall be executed by the Administrator-de-bonis-non with the Will annexed of the Estate of Robert William Holt, and approved and executed by the Grantor herein named, then all and singular the rents and income which shall be derived from and by virtue of such lease and leases shall be subject, in all respects, to disposition and division between the parties hereto, and otherwise, as is provided in and by said instrument of July 1, 1902 (referring to said Ex. A-18) . . ."

Agreement executed and acknowledged but not recorded. (Ex. 2-F.)

11. On March 17, 1905, Waialua entered into the following lease on the Holt lands for a term of 25 years from April 1, 1905, at a rental of \$9,000 per annum. This lease was duly recorded April 6, 1905, and is in evidence as Petitioner's Exhibit A-8. Cancellation of this document is prayed for in Petitioner's second amended petition so that the docu-

ment is set forth in full except as hereinafter indicated:

THIS INDENTURE made and executed this 17th day of March, 1905, by and between Carlos A. Long, in his capacity as administrator-de-bonis-non-with-the-Will-annexed of the Estate of Robert William Holt, Deceased, Robert L. Colburn, R. William Holt, George H. Holt, Edward S. Holt, Helen A. Holt; individually, and also in her capacity as Guardian of each and all of the minor children of James R. Holt, the Younger, Deceased, said children being by name Valentine S. Holt, Wattie E. Holt, Amelia A. Holt, Helen A. Holt, James R. Holt and Irene N. Holt; Elizabeth K. Richardson, wife of Edward Vivian Richardson, and Hawaiian Realty & Maturity Company, Limited, an Hawaiian Corporation, hereinafter named the Lessors, parties of the first part; and, Waialua Agricultural Company, Limited, an Hawaiian corporation, party of the second part, and John F. Colburn, James Lawrence Holt, and Eliza R. P. Christian, wife of Albert Christian, parties of the third part:

WHEREAS, all and singular the lands hereinafter described and demised, are now held and claimed in fee simple in certain proportions by and between said parties hereto (except said James Lawrence Holt and said Eliza R. P. Christian), as tenants in common, in fee,—BUT IT IS UNDERSTOOD that nothing herein contained by way of recital of any claim or

interest in said premises or any thereof, shall be either herein or in any other transaction or proceeding between the parties hereto or any of them, or between any of the parties hereto and any third party or parties, construed to either limit, extend, or otherwise affect the real title or interest in or to any of the lands or property herein described and demised, as now existing in or on the part of any party or parties to this Instrument; and,

WHEREAS, the titles of the respective parties hereto, in and to said premises have been, and are considered, solely for the purposes of this transaction, to exist in the following proportions that is to say:

(1) Of said Carlos A. Long, (hereinafter individually referred to as said Administrator,) in his said representative capacity, two-thirds ($\frac{2}{3}$) of the whole;

(Paragraph 2 stricken out, same being lined out in original lease.)

(3) Said R. William Holt, one undivided twenty-seventh portion and interest of and in that portion of said demised premises covered by Royal Patent (Grant) 973, and known as the Wahiawa Lands;

(4) Said Robert L. Colburn an undivided two twenty-sevenths ($\frac{2}{27}$) portion and interest of and in all of said demised lands;

(5) Said George H. Holt, an undivided one twenty-seventh ($\frac{1}{27}$) portion and interest of and in all of said demised lands;

(6) Said Edward S. Holt, an undivided one twenty-seventh (1/27) portion and interest of and in all of said demised lands;

(7) Said Elizabeth K. Richardson, an undivided one twenty-seventh (1/27) portion and interest of and in all of said demised lands;

(8) Said Hawaiian Realty & Maturity Company, Limited, an undivided one twenty-seventh (1/27) portion and interest of and in all of said demised lands;

(9) Said Waialua Agricultural Company, Limited, an undivided one twenty-seventh (1/27) portion and interest of and in all of said lands described in Royal Patent (Grant) No. 973, and known as the Wahiawa lands,—together with an undivided two twenty-sevenths (2/27) portion and interest of and in all and singular other, the lands herein demised;

(10) Said Helen A. Holt, individually, and in her capacity as Guardian as aforesaid, (said interests not being herein segregated for the purpose of fuller description,) One undivided Twenty-seventh, of all and singular the lands herein demised;

WHEREAS, heretofore, to-wit, prior to the 4th day of March, 1904, said R. William Holt, George H. Holt, Edward S. Holt, Elizabeth K. Richardson, Helen A. Holt, (in her individual and representative capacity as aforesaid,) Hawaiian Realty & Maturity Company, Limited, and said Lessee,—together with John D.

Holt to whose inserests therein said Robert L. Celburn has since succeeded, and one Hannah Kaulani Holt, then the widow of Owen J. Holt, and who has since deceased owned in common certain interests in a certain lease which was, on or about the day of November, 1862, executed by one W. A. Aldrich, as Executor of the Last Will and Testament of said Robert William Holt, to James Robinson Holt and Owen J. Holt aforesaid, ~~which said interest in said lease, at the date last aforesaid, covered and affected an undivided moiety of all and singular the premises herein demised,~~ to extend for and during the natural life of James Robinson Holt aforesaid, and,

WHEREAS, on said 4th day of March, 1904, in a certain action then pending in and before the District Court in and for the District of Waialua, in the Island of Oahu, wherein one, Henry Smith, Administrator-with-the-will-annexed of said Estate of Robert William Holt, was Plaintiff, and said Lessee, and others then claiming under said last mentioned Lease were Defendants,—a certain Judgment was rendered wherein and whereby it was adjudged and decreed that said last mentioned lease was and is forfeited; which said judgment still stands and obtains, in all its original force and effect;—and,

WHEREAS it has been agreed by all the parties hereto, that said Lessors shall demise,

and said parties of the third part, shall assent to the demise by said Lessors of said lands to said Lessee, for the term, and upon the covenants and conditions hereinafter more particularly set forth; and that notwithstanding any and all doubts that may have heretofore prevailed among the parties hereto as to the legality, sufficiency and effect of said judgment of forfeiture as rendered as aforesaid, by said District Court in and for said District of Waialua, on said 4th day of March, 1904, said judgment and the forfeiture thereby declared is and are, and the same is by all the parties hereto, and for all the purposes hereof, hereby recognized, acknowledged, assented to, and concurred in;

· NOW THEREFORE THIS INDENTURE WITNESSETH:

That said Lessors for and in consideration of the premises, and of the rents herein reserved, and the covenants herein expressed as on the part of said Lessee to be observed and performed hath let, and they do hereby lease and demise unto said Lessee, all and singular those certain lands and premises situated in the District of Waialua, Island of Oahu, more particularly described as follows, that is to say;

1. Royal Patent (Grant) 235, and Royal Patent (Grant) 238, being of lands now held by said Lessee under a Lease W. A. Co. No. 108 executed by and on behalf of the estate of

Robert William Holt, to Robert Halstead, dated January 13, 1893, and whereof said Lessee is not the Assignee, and the term whereof is still unexpired. But it is agreed between the parties hereto, that said last mentioned Lease is hereby surrendered by said Lessee, such surrender to take effect upon the First day of April, One Thousand Nine Hundred and Five; and the term hereby in and to the lands therein demised, shall then begin.

2. All and singular those Twelve (12) pieces or parcels, (be the number more or less,) of Apana 34 of Royal Patent (Grant) 4475, Land Commission Award 7713, of the Ahupuaa of Paalaa.

3. Royal Patent (Grant) 431 of the Kaheeka Tract.

4. Royal Patent (Grant) 973 known as the lands of Wahiawa.

Together with all and singular the rights, easements and appurtenances to said lands, or any thereof, legally belonging and appurtenant.

To have and to hold unto the said Lessee and its assigns, for and during the full and *and* term of Twenty-five Years, (25) beginning with the First day of April, in the year A. D. One Thousand Nine Hundred and Five.

The said Lessee Yielding and Paying rent for said premises in the sum of One Thousand Five Hundred Dollars, (\$1500.00) for and in respect of said lands of Wahiawa covered by

said Royal Patent (Grant 973,—and the further sum of Seven Thousand Five Hundred Dollars (\$7500.00) for and in respect of all and singular the lands herein demised other than the lands of Wahiawa,—and said Lessee further Yielding and Paying, by way of additional rent, any and all such sums as shall, for taxes and other imposts from year to year and from time to time, commencing with the levy and assessment in and for the year 1905, be levied upon, or assessed against said demised premises, or (and) any and every part and portion thereof by any and every competent authority, whether the same be a State, or Territorial Municipal, or pertaining to or levied or assessed by any other political subdivision of this Territory, whether under the name of a County, City, Town, or any Board or other Governmental Body thereof, or of any thereof, and for whatever purpose or purposes the same or any thereof shall be levied or assessed.

And said Lessee doth hereby covenant and agree with said Lessors, and with each and all of said Lessors, that it will, and its assigns shall well and truly pay and discharge the rent herein and hereby reserved, in respect of each of said tracts, in manner and amount as the same is hereinabove assigned; and that it will make such payments only in United States Gold Coin of the present Standard of weight and fineness; and that it will divide such payments, and pay said rent to said Les-

sors respectively, and to their respective heirs, executors, administrators and assigns, in the aggregate annual sums, and in the proportion hereinafter expressed and stipulated, that is to say:

(a) To said Administrator, and to his successor and successors in said trust, if any and to his successor and successors in title, Two-thirds of the annual rental hereby reserved to-wit, the sum of Six Thousand Dollars (\$6000.00):

(b) To said Robert L. Colburn, and his heirs, executors, administrators and assigns, Two Twenty-sevenths (2/27) of the rent hereby reserved, to-wit, the sum of \$666.67.

(c) To R. William Holt and his heirs, executors, administrators and assigns, the sum of Fifty-five and Fifty-five Hundredth Dollars (\$55.55).

(d) To said George H. Holt, and his heirs, executors, administrators and assigns, the sum of \$333.33.

(e) To said Edward S. Holt and his heirs, executors, administrators and assigns, the sum of \$333.33.

(f) To said Elizabeth K. Richardson, and her heirs, executors, administrators and assigns, the sum of \$333.33.

(g) To said Hawaiian Realty & Maturity Company, Limited, and its assigns, the sum of \$333.34.

(h) To said Helen A. Holt, individually, and in her representative capacity as aforesaid and to her heirs, executors, administrators and assigns, and successors in said Guardianship, and to said minor children respectively, upon their attaining majority their personal representatives and assigns, the aggregate sum of \$333.34.

Said Lessee reserving to itself, or paying to its own assigns in respect of its ownership in said premises as aforesaid, the aggregate annual sum of \$611.11.

The said Lessee doth further covenant to pay said Lessors respectively, and their respective heirs, executors, administrators and assigns, the annual aggregate sums hereinabove expressed as being payable to them respectively, in equal quarterly installments, in advance, upon the first days of January, April, July and October, of each year during the term of this Lease, and beginning with the first day of April, in the year One Thousand Nine Hundred and Five.

And said Lessee doth hereby further covenant and agree to and with said Lessors, and to and with each of them, and to and with their respective successors in trust, heirs, executors, administrators and assigns, as the case may be, that it, said Lessee at the end, or other earlier termination of the term hereby limited, will peaceably and quietly quit, yield up, and re-

deliver the possession of said demised premises, together with all and singular the buildings, and improvements that shall then be upon said demised premises, to said Lessors, and their respective successors in trust, heirs and assigns—such re-delivery of possession to be made to the said parties hereby contemplated, in undivided parts or portions according to the proportions hereinabove declared to pertain to them respectively, except as the same, or any part thereof, shall in the interval, be definitely partitioned between said Lessors and said Lessee as owners thereof in fee.

It is a condition of this Lease that, at any time before the determination, (either by efflux of time, Judicial decree of forfeiture, or mutual agreement of parties), of the term hereby limited, said Lessee and its assigns shall be at liberty to deal as by general law existing at the date of this Lease permitted, with respect to fixtures and the removal thereof from said premises; Provided However, that said Lessee shall not in any event be permitted to demolish, destroy, impair, or remove any permanent improvements of the general character of ditches, sluices, embankments, dams, runways, trestles, bridges, culverts, houses, fences, or other similar structures or excavations which shall be dug into, or built into or upon the earth, in a manner calculated and intended to be permanent, or which shall be built upon foundations

or piers of cement, masonry, or other similarly durable and permanent foundations. But Provided Further that nothing herein contained shall operate to prevent the Lessee from making such changes and alterations in the improvements, and in the method of development of the resources of the demised premises as it shall from time to time elect, and excepting perishable structures such as laborers' houses and similar wooden buildings.

And said Lessors, and said parties of the third party, do hereby covenant each for himself, herself, and itself to and with said Lessee and its assigns, that said Lessee, while paying said rent, (including taxes and other imposts), as herein reserved at the times and in the manner herein specified for the payment of the same, and observing and performing all other the conditions and covenants of this Lease as on its (said Lessee's) part to be observed and performed, shall peaceably and quietly hold and enjoy the use and possession of said demised premises, free from let or hindrance from any other person or persons having lawful claim or title to the same, or to any thereof. Provided However, and it is an express limitation upon this covenant, that said Lessors respectively shall be bound hereby only to the extent of their, and each of their respective shares and interests in said demised premises as hereinabove set forth; or shall hereafter be found to exist by any competent court or authority.

But if said Lessee or its assigns shall make default in the payment of said taxes or other imposts, and permit the same or any part thereof to become delinquent and to become a charge or lien upon the premises hereby demised, or any part or portion thereof; or if said Lessee or its assigns shall fail or neglect to pay to said Lessors, or to any or either of them or their respective successors in trust, heirs, executors, administrators and assigns as the case may be, the rent herein reserved and made payable to said Lessors respectively, at the time or times and in manner whereon and wherein the same is hereby made payable—and further if such failure or neglect to pay rent shall continue for and during ten days after any installment thereof, by the terms of this Lease, shall become and be due and payable—then, and in either such event, and at any time thereafter, while such or any such default shall continue, the said Lessors, and their respective successors in interest hereunder, or any one or more of such Lessors or successors in interest, concerning whom such default shall so exist and continue, may, either in person or by authorized agent, enter upon said premises and by such entry terminate this Lease as to the undivided part or parts, portion or portions, interest or interests which shall then belong or pertain to the person or persons concerning whom such default shall then exist, and who shall make such

entry and declare such forfeiture as herein contemplated.

And, (or) any one or more of such Lessors or their successors in interest hereunder may, either with or without having first made such entry and declaration, at any time while such default shall continue with respect to such Lessor or successor in interest so acting, proceed by action at law, or otherwise, as may be at the time of such proceeding permitted by any Statute in force upon the Island of Oahu, and in any Court or Courts, and before any tribunal having jurisdiction of the cause, to avoid, terminate and have forfeited this Lease, and all rights of said Lessee and its assigns hereunder, in respect of the part and parts, portion or portions, interest and interests of the person and persons so acting as is in this paragraph contemplated.

And whenever and as often as any such action as is contemplated in or by the last two preceding paragraphs or either of them shall be taken, the person or persons so taking such action shall be entitled to a restitution of the possession of such undivided (or divided as the case may be) part, portion, and interest, of and in said demised premises as shall then belong and pertain to the person or persons so proceeding;—or to the possession of which, he, she, it or they shall then be legally entitled.

And it is further understood and agreed between the parties hereto, and made a condition of this Lease, that any Declaration, or Judgment or Forfeiture of this lease or of any interest herein or hereunder, which shall be made, decreed, or rendered, in pursuance of the three next preceding paragraphs hereof, or of any or either of said three paragraphs, shall be considered a termination of this Lease, to the extent, and for the purpose of thereupon absolutely terminating the right of said Lessee to demolish, impair, or remove from said premises, any of the fixtures, including buildings, machinery pumps, mills, and milling, and (or) pumping plant which shall then be upon said premises, the intent hereof being to expressly negative the right of said Lessee and its assigns, to demolish, impair, or remove such fixtures, buildings, mills, pumps, etc., etc., from said premises during any interval that may elapse between the date of such Declaration, Decree or Judgment of Forfeiture, and the date whereon a final judgment concerning the same may or might be obtained in any Appellate Court or Courts.

It is a further condition of this Lease, that the rentals, and all and singular the different sums and installments hereinabove provided to be paid by way of rent hereunder to the respective Lessors herein, shall be payable to them and their respective successors in interest, heirs, executors, administrators and assigns, as the case may be, in the City of Honolulu, at

the Office of the Lessee or of its agent from time to time, and that the ten days period of default hereinbefore provided shall not begin to run as to the several shares or interests hereinbefore provided for until demand for such share or shares of rent respectively shall have been made at said office, by the persons thereunto respectively entitled, or their respective agent, authorized in writing, or their respective attorneys.

It is a further condition of this lease that in any action which shall be brought to terminate this Lease, or declare, or have adjudged a forfeiture thereof, service of process upon the Manager of said Lessee's plantation, or upon any other person who shall for the time being, be in charge and control of the property of said Lessee, within said District of Waialua shall be deemed sufficient service of process (which terms shall be construed to embrace all legal writs and documents that shall be involved) upon said Lessee, and said Lessee hereby expressly waives any statutory right or benefit that shall exist in its favor as to such service, and which shall be different from, or opposed to the condition in this paragraph expressed.

In witness whereof the said Hawaiian Realty & Maturity Company, Limited, and said Lessee have caused this Instrument to be signed by their appropriate officers, and their respective corporate seals to be hereto attached; and said

Lessors other than said Hawaiian Realty & Maturity Company, Limited, and said parties of the third part, have hereunto set their hands and seals the day and year first hereinabove written.

CARLOS A. LONG,

Administrator - de - bonis - non -
with the Will - annexed of the
Estate of Robert William
Holt, deceased.

ROBERT L. COLBURN.

EDWARD S. HOLT.

HELEN A. HOLT.

HELEN A. HOLT,

As Guardian of Valentine S.
Holt, Wattie E. Holt, Amelia
A. Holt, Helen A. Holt, James
R. Holt, and Irene N. Holt.

ELIZABETH K. RICHARDSON.

[Corporate Seal]

HAWAIIAN REALTY &

MATURITY COMPANY, LTD.

By L. K. KENTWELL,

Its President.

By HENRY P. KAOHI,

Its Secretary pro tem.

[Corporate Seal]

WAIALUA AGRICULTURAL
COMPANY, LIMITED.

By G. P. CASTLE,

Its President.

By W. A. BOWEN,

Its Treasurer.

JOHN F. COLBURN.

JAMES L. HOLT.

ELIZA R. P. CHRISTIAN.

Executed in presence of

Territory of Hawaii

Island of Oahu

First Judicial Circuit,

City of Honolulu.—ss.

On the eighteenth day of March, one thousand nine hundred and five, before me, N. Fernandez, a Notary Public in and for said Territory, Island, Circuit and City, duly commissioned and sworn, personally appeared Carlos A. Long, Administrator-de-bonis-non-with-the-Will-annexed of the Estate of Robert William Holt, deceased; and John F. Colburn; and James Lawrence Holt; and L. K. Kentwell, President, and Henry P. Kaohi, the Secretary pro tem of Hawaiian Realty & Maturity Company, Limited, an Hawaiian Corporation; and Eliza R. P. Christian, wife of Albert Christian, each of said persons being personally known to me, and further known to me to be

the persons described in, and who executed the foregoing instrument; and they, and each of them acknowledged to me that they executed said instrument freely and voluntarily, and for the uses and purposes therein set forth. And said L. K. Kentwell, and said Henry P. Kaahi, further acknowledged to me that they executed said instrument as and for the free act and deed of said Hawaiian Realty & Maturity Company, Limited, and said Eliza R. P. Christian, upon an examination by me held separate and apart from, and out of the hearing of her husband, the said Albert Christian, further acknowledged to me that she signed and executed said instrument freely and without compulsion, fear, or constraint from her said husband.

And on the 20th day of March, one thousand nine hundred and five, at the Territory, Island, Circuit and City, aforesaid, personally appeared before me Robert L. Colburn, George P. Castle, the President, and W. A. Bowen, the Treasurer of Waialua Agricultural Company, Limited, an Hawaiian Corporation, each and every of said persons being personally known to me, and further known to me as the persons described in, and who executed the foregoing instrument; and they, and each of them, acknowledged to me that they executed the said instrument freely and voluntarily and for the uses and purposes therein set forth. And said George P. Castle, and said W. A. Bowen fur-

ther acknowledged to me that they executed said instrument as and for the free act and deed of said Waialua Agricultural Company, Limited.

And on the twenty-second day of March, one thousand nine hundred and five, at the Territory, Island, Circuit and City aforesaid, personally appeared before me Edward S. Holt, he being personally known to me, and further known to me to be the person described in and who executed the foregoing instrument, and he acknowledged to me that he executed the said instrument freely and voluntarily, and for the uses and purposes therein set forth.

And on the twenty-third day of March, one thousand nine hundred and five, at the Territory, Island, Circuit and City aforesaid, personally appeared before me Elizabeth K. Richardson, wife of Edward Vivian Richardson, she being personally known to me, and further known to me to be the person described in and who executed the foregoing instrument, and she acknowledged to me that she executed the said instrument freely and voluntarily, and for the uses and purposes therein set forth. And said Elizabeth K. Richardson upon an examination by me held separate and apart from, and out of the hearing of her husband, the said Edward Vivian Richardson, further acknowledged to me that she signed and executed said instru-

ment freely and without compulsion, fear or constraint from her husband.

And on this twenty-seventh day of March, one thousand nine hundred and five, at the Territory, Island, Circuit and City aforesaid, personally appeared before me Helen A. Holt, widow, in her own behalf and as Guardian of Valentine S. Holt, Wattie E. Holt, Amelia A. Holt, Helen A. Holt, James R. Holt and Irene N. Holt, minor children of James R. Holt, the Younger, deceased, she being personally known to me, and further known to me to be the person described in and who executed the foregoing instrument, and she acknowledged to me that she executed the said instrument freely and voluntarily, and for the uses and purposes therein set forth, individually and in her capacity as Guardian aforesaid.

And I do hereby further certify that the following changes and alterations were made in the Text of said instrument before the execution and acknowledgment of the same, by the parties aforesaid, that is to say: On page two thereof, one entire paragraph consisting of the fourth line to the twelfth line of said page two inclusive, numbered from the top, was expunged and stricken out. On page eight thereof, in the fifth line from the top, the word "and" was interlined between the words "herself" and "itself".

In witness whereof I have hereunto set my hand and affixed my official seal the day and year last in the foregoing Certificate above written.

[Seal]

N. FERNANDEZ,
Notary Public, First Judicial
Circuit, Territory of Hawaii.

12. By deed dated August 4, 1905, J. R. Galt, acting for Waialua, purchased of George H. Holt his 1/27 interest in the Holt lands at Waialua and his 1/9 interest in Grant 1092 for a consideration of \$6,000. Title to these interests was taken in the name of J. R. Galt, Trustee. Deed duly recorded. (Ex. A-11.)

13. By deed dated August 5, 1905, J. R. Galt, acting for Waialua, purchased of the Hawaiian Realty & Maturity Company and Annie Holt Kentwell all of their right, title and interest in the Holt lands at Waialua and in Grant 1092, for a consideration of \$6,000, this being the Annie Kentwell 1/27 interest in the lands of the R. W. Holt estate, and a 1/9 interest in Grant 1092. Title to these interests was taken in the name of J. R. Galt, Trustee. Deed duly recorded. (Ex. A-12.)

14. By deed dated May 7, 1906, J. R. Galt, acting for Waialua, purchased of Helen A. Holt, individually and as guardian of her minor children, a 1/27 interest in the Holt lands at Waialua, and a 1/9 interest in Grant 1092, for a consideration of \$6,300. Title to these interests was taken in the

name of J. R. Galt, Trustee. Deed duly recorded. (Ex. A-13.) Attached to said Exhibit, and a part of the same, are (1) affidavit of the auctioneer conducting the sale, which states in part that the upset price was \$6,000 and that "said premises were offered for sale and a number of bids received therefor"; (2) Notice of guardian's sale of real estate; (3) account of sale of lands; and (4) order confirming sale of real estate.

15. On August 31, 1906, Eliza R. P. Christian executed a document assigning to Annie Holt Kentwell, for the considerations therein set forth, rents and profits accruing as therein specified. This document, duly recorded June 17, 1907, was first offered in evidence by petitioner and later by respondent, and bears the designation "Exhibit 2-G." Cancellation of this document is prayed for in Petitioner's second amended petition, so the document is set forth in full.

THIS INDENTURE—made this 31st day of August, A. D. 1906, by and between—ELIZA R. P. CHRISTIAN—(the only child and heir of John Dominis Holt, the elder) of Honolulu, Island and County of Oahu, Territory of Hawaii, of the first part, and—ANNIE HOLT KENTWELL—of the same place, party of the second part.

WITNESSETH—WHEREAS the party of the first part has for many years last past been supported and maintained at the home of the party of the second part, and at the cost and

expense of the said party of the second part, and

WHEREAS—the said first party is the only child and heir of John Dominis Holt, the elder, being also a devisee under the Will of R. W. Holt, deceased, and is entitled in expectancy to a certain undivided interest or moiety in certain lands situate at Waialua, Oahu, now leased to the Waialua Agricultural Company, Limited, by lease dated the 17th day of March, 1905, and recorded in the Hawaiian Registry of Deeds in Liber Folio , and

WHEREAS—by virtue of being such heir of John Dominis Holt, the elder, and such devisee under the will of R. W. Holt, deceased, aforesaid, she, the said party of the first part, shall upon the death of him, the said John Dominis Holt, the elder, be entitled to her share of the rents reserved in said lease aforesaid, which share of said rents aforesaid is now enjoyed by her father, the said John Dominis Holt, the elder, and

WHEREAS—the party of the second part has agreed to support and to maintain the party of the first part for and during the period of the natural life of her, the said party of the first part,

NOW THEREFORE THIS INDENTURE WITNESSETH—That the said ELIZA R. P. CHRISTIAN in consideration of the premises and of One Dollar to her in hand paid by

ANNIE HOLT KENTWELL of Honolulu aforesaid, the receipt whereof is hereby duly confessed and acknowledged and for other and valuable consideration to the said ELIZA R. P. CHRISTIAN, moving from said ANNIE HOLT KENTWELL, she, the said ELIZA R. P. CHRISTIAN, does hereby give, sell, assign, release, transfer and set over unto the said ANNIE HOLT KENTWELL, her heirs executors and administrators, all her title and interest in and to any and all rents issues and profits to which she may hereafter be entitled or which may be due and payable to her by, through or under the lease to the Waialua Agricultural Company, Limited, dated the 17th day of March, 1905, and recorded in said Liber

Folio or by virtue of being the only child of John Dominis Holt, the elder, and devisee under the will of R. W. Holt, deceased, together with all and every her right to demand, receive, collect and receipt for all such rents, issues and profits from whomsoever due during the term of the natural life of her, the said ELIZA R. P. CHRISTIAN.

AND—it is expressly agreed and understood between and by the parties hereto that the party of the second part shall support and maintain her, the party of the first part, for and during the natural life of said first *part*.

AND— it is further agreed and understood

by and between the parties hereto that in case the party of the first part shall survive the party of the second part, the heirs of said second party shall be entitled to perform the covenant of this agreement on the part of said second party to be kept and performed, and they shall during the life of said first party be entitled to the benefit or benefits thereof.

IN WITNESS WHEREOF the said ELIZA R. P. CHRISTIAN and ANNIE HOLT KENTWELL have hereunto set their hands and seals the day and year first above written.

ELIZA R. P. CHRISTIAN
ANNIE HOLT KENTWELL

Executed in the presence of:

JOHNN D. HOLT

Territory of Hawaii,

County of Oahu,

District of Honolulu—ss:

On this 31st day of August, A. D. 1906, personally appeared before me ELIZA R. P. CHRISTIAN (w) and ANNIE HOLT KENTWELL (w), both known to me to be the persons described in and who executed the foregoing instrument, who severally acknowledged to me that they executed the same freely and voluntarily, and for the uses and purposes therein set forth.

[Notarial Seal] N. FERNANDEZ,

Notary Public, First Judicial
Circuit, Territory of Hawaii.

16. By deed dated June 29, 1907, M. T. Simon-ton, Commissioner, under decree of the Circuit Court of the First Judicial Circuit, Territory of Hawaii, conveyed to D. L. Withington, acting for Waialua, the lands covered in a petition for foreclosure of mortgage filed June 6, 1905, entitled "August Dreier v. John D. Holt, Jr., et al.," and including the Waialua Agricultural Company as respondent, for a consideration of \$9,000; the interest in the lands and the apportionment of consideration being \$8,000 for a $\frac{2}{27}$ interest in the lands of the R. W. Holt estate at Waialua and \$1,000 for the $\frac{2}{9}$ interest in Grant 1092. Title to these interests was taken in the name of D. L. Withington, Trustee. Deed duly recorded. (Ex. A-14.)

17. On May 21, 1908, James L. Holt, as mortgagor, and John F. Colburn, as trustee, conveyed by way of mortgage to William R. Castle on a five-year mortgage to secure a loan of \$12,500, all of the interest of the mortgagor, James L. Holt, in and to the estate and property, both real, personal and mixed, of the R. W. Holt Estate, either in Waialua or in Waianae or elsewhere on the Island of Oahu, and covering specifically the Holt lands at Waialua, such interests of the mortgagor covering all his rights and interests by virtue of his title as heir at law of R. W. Holt or by purchase of any interest therein, and whether the interest be present or expectant, and also all of the

trustee's interest in said property under the deed of trust of July 1, 1902 (Ex. A-18), as well as any other interest therein, whether the same was prior or subsequent to said deed of trust. The mortgage set forth covenants of title and a covenant that the premises were free and clear of any encumbrances except a certain lease of March 17, 1905 (Ex. A-8) to Waialua, and a certain lease on the Waianae property not here involved. Mortgage duly recorded.

This mortgage was assigned by W. R. Castle on May 21, 1908, to Castle & Cooke, Limited, and was later satisfied by the payment of moneys as set forth in Exhibit 2-L. (Ex. A-16.)

18. Agreement dated March 25, 1910, by which Albert Christian, husband of Eliza R. P. Christian, in consideration of the payment to him of \$100, covenants that upon payment to him of \$2500 he will consent to the sale by his wife, Eliza R. P. Christian, and will release and quitclaim to L. L. McCandless of Honolulu, all his right, title and interest in the Holt lands at Waialua, as may be conveyed to said McCandless by Eliza R. P. Christian within one year from date. Agreement duly recorded. (Ex. A-19.) The agreement in full follows:

THIS INDENTURE made and entered into this Twenty-fifth day of March, A. D. 1910, by and between ALBERT CHRISTIAN, husband of ELIZA HOLT CHRISTIAN, of Ewa. City and County of Honolulu, party of the first part, and L. L. McCANDLESS, of Honolulu, City

and County of Honolulu aforesaid, party of the second part:

WITNESSETH:

That the party of the first part, in consideration of the sum of ONE HUNDRED DOLLARS (\$100.00) to him in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, does hereby covenant and agree to and with the party of the second part that, upon the request of the party of the second part, and upon paying to him, the party of the first part, of the further sum of Two Thousand Five Hundred Dollars in United States Gold Coin, he the party of the first part, will consent to and release and quitclaim all his right, title and interest in such lands, situate, lying and being within the District of Waialua, City and County of Honolulu aforesaid, as may be conveyed to the party of the second part by said Eliza Holt Christian, wife of the party of the first part, within one year from date hereof.

And the party of the first part further covenants and agrees to and with the party of the second part that, upon request of the said party of the second part as aforesaid, and upon the payment to him, the party of the first part, of the said sum of Two Thousand Five Hundred (\$2500.00) Cash in United States Gold Coin as aforesaid, he the party of the first part, will sign, seal, acknowledge and deliver to the party of the second part such instrument or instru-

ments in writing as may be necessary or requisite in the premises.

IN WITNESS WHEREOF said party of the first part has hereunto set his hand and seal this 25th day of March 1910.

(Signed) A. CHRISTIAN. ▢

In presence of

(Signed) WILLIAM SAVIDGE

19. Agreement dated April 7, 1910, by which Albert Christian, husband of Eliza R. P. Christian, in consideration of the payment to him of \$300, covenants that upon payment to him of a further sum of \$2300, he will consent to the sale by his wife, Eliza R. P. Christian, and will release and quitclaim to William R. Castle, all his right, title and interest in the Holt lands at Waialua as may be conveyed to said William R. Castle or such person as he may designate; the agreement to be binding for one year from April 7, 1910, or unless a sale of the Eliza R. P. Christian interests in the Holt lands at Waialua was made to L. L. McCandless one year from March 25, 1910. Agreement duly recorded. (Ex. A-20.) The agreement follows in full:

THIS AGREEMENT, made this 7th day of April, A. D. 1910, between ALBERT CHRISTIAN, husband of Eliza Holt Christian, now residing at Ewa, City and County of Honolulu, Territory of Hawaii, of the first part, below referred to as "Christian," and WILLIAM R. CASTLE, of said Honolulu, of the second part, below referred to as "Castle,"

WITNESSETH:

That the said Christian, in consideration of Three Hundred Dollars (\$300.00) to him paid by said Castle, the receipt whereof is acknowledged, does hereby promise, covenant and agree with said Castle that, in case his said wife shall sell or agree to sell her interest in all or any portion of the property generally known as the **HOLT ESTATE PROPERTY**, in Waialua, in said City and County, he, the said Christian, will, at the request of said Castle or of such person as said Castle shall designate, and upon the further payment to him, the said Christian, of the sum of Twenty three hundred DOLLARS (\$2300.00) consent to the sale of said wife's interest or property, and will sign such agreement of sale or deed for such interest, thereby evidencing his said consent, and will release and quitclaim all of the right, title and interest in such property which he now has or may hereafter become entitled to; and that upon such signature by him so placed he will properly acknowledge and deliver such deed or agreement of sale; or, if so requested, shall and will, at the expense of said Castle or of the purchaser of said interest, sign, execute, acknowledge and deliver such other instrument as may be necessary to carry out and effectuate his said consent and release and quitclaim of all of the right, title and interest in said property which he now has or may hereafter become entitled to.

PROVIDED, HOWEVER, that this instrument will become null and void and of no effect whatsoever unless such sale or agreement of sale shall have been made within one year from the date hereof;

AND PROVIDED FURTHER that this instrument shall not be binding if he shall, within one year from the 25th day of March, 1910, sign a deed of his said wife's interest to L. L. McCandless in accordance with an agreement by him made and entered into to such effect on said date.

IN WITNESS WHEREOF, the said ALBERT CHRISTIAN has hereto set his hand the day and year first aforesaid.

(s) ALBERT CHRISTIAN.

Witness:

MISS M. CHRISTIAN.

Territory of Hawaii

Island of Oahu—ss:

On this 7th day of April A. D. 1910 personally appeared before me Albert Christian known to me to be the person described in and who executed the foregoing instrument and who acknowledged to me that he executed the same freely and voluntarily for the uses and purposes therein set forth.

(s) CARLOS A. LONG,

[Notarial Seal] Notary Public, First Judicial Circuit.

20. During 1909 and 1910 certain cablegrams and letters showing the course of negotiations leading up to and culminating in the execution of the deed of May 2, 1910, (Ex. A-21), cancellation of which is prayed for in Petitioner's petition, and of the deed of May 28, 1910, (Ex. A-22), were introduced by Petitioner. With the exception of D-37, all such cablegrams and letters were, upon demand of Petitioner, produced from the files of Waialua and Castle & Withington, the then attorneys for Waialua. The exhibit designation is hereinafter indicated, though as a whole they are referred to as the "D series." The following cable addresses appear in the D series: "Lothrop"—D. L. Withington in London; "Shermipple"—D. L. Withington at the firm of Whipple, Sears & Ogden in Boston; "Ola"—Castle & Withington, in Honolulu; and "Osco"—James L. Holt in Honolulu.

(Certain cables were in code and certain not in code. The cables or the copies thereof which were in code have on the face of the cables themselves a decoding by Castle & Withington. In the following list are given the cabled words and such decoding, but as it is impossible to describe accurately the face of all such cables, the cables numbered and lettered D-10, D-11, D-13, D-15, D-16, D-19, D-21, D-22, D-25, D-27, D-28, D-29 D-30 and D-32, being original exhibits, are also by the order of the Supreme Court

of Hawaii made a part of this record and incorporated herein by reference.)

D-1: Original letter dated April 19, 1909,
Lawrence Kentwell to James L. Holt.

Western Union Code: Cable Address:
Kentwell, Elizabeth,
New Jersey.

Letterhead:
Livingston Hall
Columbia University

New York City
April 19 '09

My dear James.

We are so glad to hear from you, and I have shown your letter to Uncle John and Liza. We talked the matter over, and I explained your proposition to him, and he requests me to inform you as follows:

1. He is willing to sign a release to the effect that he will not demand more than what he is now entitled to, that is, \$35. per week. 2. He wants to know in case you can give Liza \$15,000 cash, when the papers are signed (meanwhile the balance to be a lien on the land, payable after his death) he would be willing to release, say \$50. a month, that is, he would draw \$100. per month, instead of \$150, as heretofore.

From the contents of your letter, I understand that the Waialua Sugar Co. would give \$75,000. cash, that is, three-fourths, as you said

they are willing to pay \$100,000 for the interest of uncle John and your father, this is not so clear to me, please explain.

If you cannot give \$15,000 cash, then the price for Liza's interest will be \$45,000, balance payable after uncle John's death, that is, \$10,000 cash, balance \$35,000. payable as above, but we would like to have \$15,000.

We are all going to England in the early part of June, and please cable us if you accept the above offer when you receive this letter, and if so, please prepare papers as soon as you can and send them on through a bank down there to their New York correspondent here, with instruction to pay the amount to uncle John and Liza upon their signing the necessary papers.

Our family is all well, Annie is feeling fine, so is Uncle John and Liza they all wish to be kindly remembered to your family, and send their aloha nui, including myself.

Very Sincerely yours,

Lawrence K. Kentwell.

P.S. If you are going to give \$15,000 cash, then, say in your cable "fifteen", and if \$10,000 cash, then say "ten" and I shall know what you mean, you may also add the word "accept" to either "fifteen" or "ten".

Eliza R. P. Christian vs.

D-2: Original letter dated September 27, 1909.
James L. Holt to W. R. Castle, enclosing
foregoing original letter

Letterhead

Office Supply Co., Ltd.

Honolulu, T. H. September 27, 1909.

Mr. W. R. Castle,
Honolulu, T. H.

Dear Sir:

Knowing the interest you have taken in my affairs through securing from Castle & Cooke Ltd., that loan of \$12,500.00 on all my right, title and interest in the R. W. Holt estate, and believing it is both to our mutual interest as mortgagor and endorser to at once purchase the undivided one-third interest of Eliza P. Christian in the Ahupuaas of Halemano and Wahiawa including several parcels in Kamanaui, District of Waialua, Oahu, now under lease to the Waialua Agricultural Co., for 25 years from April 1/05 @ \$3000.00 per annum.

Eliza is the only child and direct heir at law of my uncle John Dominis Holt Sr., whose life interest in the estate I bought out in 1902 under an agreement that he was to receive a weekly stipend of \$35.00 per week during the term of his natural life.

I have offered to buy my cousin's undivided third interest in the above lands for the sum of \$50,000.00, \$10,000.00 in cash upon the execution of a deed duly acknowledged and delivered, and the balance at the death of her father.

She and her father fully approve of the proposition as per enclosed letter from Mr. L. K. Kentwell with whom they are at present residing in Oxford, England.

Now my proposition to you is this, knowing that Mr. Goodale has recommended to the directors of the W. A. Co., if I am correctly informed, the immediate acquisition of these interests, as being of vital importance to the plantation, I believe now is our opportunity to secure this one third interest from my cousin at a very reasonable figure.

Will you undertake to secure the money for me on my cousin's interest in the above lands for a contingent fee of 10% of the purchase price, I want \$15,000.00 @ 6% interest per annum, payment of interest to be secured by my uncle relinquishing \$50.00 per month of his allowance, and the balance to be advanced by myself; unless the W. A. Co., will come forward with the cash on the proposition submitted to them by my Trustee Mr. J. F. Colburn and which no doubt has received your firm's consideration. The interest under which Mr. Colburn is acting for me are simply the life estate of my father and my uncle, and it does not under any circumstances include my prospective interest nor my cousin's.

Trusting that you will give this matter your earnest consideration and treat it as confidential,

I remain,

Yours sincerely,

JAMES L. HOLT.

D-3: Copy letter dated March 31, 1909,
John F. Colburn to E. D. Tenney.

Honolulu, T. H. March 31st, 1909.

E. D. Tenney, Esq.,

Pres., Waialua Agricultural Company, Ltd.,
Honolulu.

Dear Sir:

Referring to previous written and oral suggestions in this connection, I now propose an offer, in my capacity as Trustee of James L. Holt, under his Deed of Trust dated July 1st, 1902, to convey to the Waialua Agricultural Company, Ltd. all of the so-called Holt lands in the District of Waialua, and which are now under lease to your Company, that is, all of the interests therein of James R. Holt and John D. Holt, as the said interest have here-to-fore united in me, in said Trust Deed,—and also in and all further interests therein which may hereafter be acquired by Lokalia Holt—(wife of James R. Holt,) and James L. Holt, or either of them.

The price at which I am willing to so convey is One Hundred and Twenty Thousand (\$120,000) Dollars, and the times and methods of payments which I propose are as follows:

I. IN RESPECT OF THE JAMES R. HOLT INTEREST. Three quarters of the proportionate price of this interest or Forty-five Thousand Dollars in all to be paid by your Company in cash upon delivery of the documents as

hereafter proposed. The remaining one quarter Fifteen Thousand (\$15,000) Dollars to be held by your Company in the nature of a guarantee or an insurance fund, and interest thereon at the rate of 5% per annum to be paid to me by your Company during the life of James R. Holt. Upon his death (and the execution by the said Lokalia and James L. Holt) of any further assurance that may be deemed necessary the remaining sum of Fifteen Thousand Dollars to be paid to me, or my successors in trust.

II. AS TO THE INTEREST OF JOHN D. HOLT. The entire proportionate value of this interest, Sixty Thousand (\$60,000) Dollars to be held by your Company during the life of John D. Holt and interest thereon, at the rate of 5% per annum to be paid by your Company to me. Upon his death or as soon thereafter as questions of title can be settled, your Company shall pay to me or my successor in Trust such proportion of said sum of Sixty Thousand (\$60,000) Dollars as shall be determined I shall represent the legal interest (if any) of James L. Holt, or his heirs if he be then deceased, in and to the Estate of his uncle J. D. Holt.

III. I propose that said Lokalia Holt, James L. Holt, and the wife of the latter shall join with me in the proposed conveyances, and shall severally covenant, that they and their respective heirs, shall execute and deliver to your Company or its successors any interest, any and

all such further assurances and conveyances as shall be requisite to fully convey in and all interests that they, or any of them, shall acquire upon, or by reason of, the death of the said James R. and John D. Holt or either of them, as the case may be.

Awaiting your reply, I am

Yours truly,

JOHN F. COLBURN

D-4: Original letter dated April 3, 1909,
E. D. Tenney to John F. Colburn.

Letterhead

Castle & Cooke, Ltd.

Honolulu, Hawaii, April 3, 1909.

Mr. John F. Colburn,
Honolulu.

Dear Sir:

I now own receipt of your letter of the 31st Ult., in re Holt lands in the District of Waialua.

Your proposition will be taken under consideration, although I am inclined to think that it will be impracticable, or perhaps a better word would be "impossible", for the Waialua Agricultural Co., Ltd., to accept the proposition as outlined by you.

Very truly yours,

E. D. TENNEY,

AK

President, Waialua Agr'l Co., Ltd.

D-5: Copy letter dated February 17, 1910,
James L. Holt to Lawrence Kentwell.
Honolulu, T. H., Feby. 17, 1910.

Mr. L. K. Kentwell,
159 Woodstock Road,
Oxford, England.

Dear Sir:

Your letter under date of the 28th of January received and noted.

The Waialua proposition has narrowed itself down to a point whereby I forwarded you a cable yesterday which I trust I will be in receipt of an answer before many hours. The address Woodstock was transposed whereby on perusing the cable after it had gone read Stockwood which I hope has not brought an inability to deliver the message promptly. The situation is this. The Waialua Agricultural Company Ltd. have concluded not to buy the two-thirds interest in Waialua lands unless yourself and wife and Eliza and Colburn have signed a contract whereby you folks will accept a certain amount of money for said two-thirds interest in the event that the Supreme Court of this Territory will decide that you folks are entitled to your one-third and Colburn holding in trust for me my one-third. The money to be paid immediately upon the decision being rendered as above and the delivery of the deed. Therefore if you and Annie and Eliza will undertake to contract

with me to sell to me or such person as I may name your one-third interest of the Waialua Lands upon a final decision of the Supreme Court deciding in your favor for the sum of Thirty Thousand Dollars (\$30,000.00) to be paid upon delivery of deed the matter will be immediately taken into Court under a submission between all parties concerned; ostensibly being a friendly suit to determine the rights of the parties in interest and in a short while we will know where we are at.

This offer I make you now is final and if the sale goes through it means that upon the payment to you folks the sum of Thirty Thousand Dollars you are out of it holus-bolus. In other words you will have to provide for Uncle John as far as his weekly stipend is concerned.

You will bear in mind that the trust deed and agreement I have with Uncle John it is provided that should Eliza survive her father she shall receive one-half of the total that I can get for the one-third. Now it is an open question as you know whether she will survive him or not if she does you may be able to get more for her share than this amount I offer. if she should happen to die before Uncle John you would be shut out of it entirely. Now you know that a bird in hand is worth a great many in the bushes so therefore I apprehend you will look this question squarely in the face and cable a reply without delay. Cabling

will save at least 21 days' time and we can get the matter before the Court and decide in that time.

In reference to Albert Christian I think that it will be futile to oppose him in the method proposed such as you all coming home here and bring divorce proceedings against him. If however you will permit Eliza and Uncle John to come home here, in that event if you will cable your assent to this and the amount required for their trip I will cable it to you expressly for this purpose.

The Waialua people have intimated strongly that should this attempt upon their part to buy fail they will resort to a suit in partition for the sale of the land at Public Auction. You can appreciate what that will mean, they will acquire the same at any old price they feel like paying; who can oppose them successfully, we all have not got the money.

Yours very truly,

J. L. HOLT.

D-6: Copy letter dated March 8, 1910,
Lawrence Kentwell to James L. Holt.

Oxford, 159 Woodlock Rd., March, 8, 10.

Dear James:

Liza and I have just got your letter, and after a long consultation with Annie & Uncle John,

they have concluded to sell for \$30,000—or a little more for cash, as you said they offer you \$75000 cash and after settling up with Albert Christian \$5000 and Colburn there ought to be something left, and some must be paid over to Liza.

With regard to our releasing you from paying to Uncle John the \$150 a month which we are now getting from Colburn, Annie said she would do so, upon paying her \$5000 and I think the sum is reasonable because Uncle might live for 5 or 10 years, and you get your money back in less than 3 years—so that the whole thing will amount to \$35000 cash, and if upon receipt of this letter, you have sent on the papers, but with no instructions to pay us upon the signing of the deeds, you will please do so at once. I suppose the W. A. Co. will send on the papers thro' the Bank of Hawaii to their London agents, and they will notify us when same have arrived. You will please inform the W. A. Co. that the cash must be paid over to us thro' their agents or the agents of the Bank of Hawaii in London when the deeds and all necessary papers are signed by us, or else there will be nothing doing.

Cabling is too expensive for me, and so I can only cable the word "proceed" as arranged; and I hope the papers will soon be on their way here.

The money I hope will help you out in your business, and all around.

With Aloha from all of us

Same as ever,

LAWRENCE.

D-7: Copy letter dated March 30, 1910, John F. Colburn to W. W. Goodale.

Honolulu, T. H., March 30, 1910.

Mr. W. W. Goodale,

Manager, Waialua Agricultural Co.,

Waialua, Oahu.

Dear Sir:

It appears that Mr. Withington has wirelessed that the message sent to him the other day by Mr. Castle is not entirely intelligible, but he favors that portion of the message sent which he understands to be a suit of divorce to be instituted against Christian. Since receiving Kentwell's letter of the 10th inst. wherein he suggests that Eliza and John D. return at once if money is forwarded for their passage and etc. to institute divorce proceedings, I have come to the conclusion that it would be the most unwise way of expediting the closing of the transaction we have been talking about so long. Mr. L. L. McCandless I am informed has made a definite offer to the Kentwells without any strings and if your Company fails to act promptly your opportunity to buy the Lands will be nil.

I fail also to know why it is necessary to go through all the formality of Court proceedings, as it may tie up the matter for a longer time than we anticipate,—just as a divorce proceeding against Christian could be appealed to the Supreme Court at Washington which means at least three years loss of time. James L. and I are willing to deal with you, as against McCandless but your action must be prompt and decisive. I therefore suggest the following programme.

FIRST: We to at once secure the necessary Document from Albert Christian to effectuate the execution of his name to such Document as might be wanted later. You to advance a sum not greater than Five Hundred Dollars (\$500.00) to carry this into effect and to be deducted from the purchase price.

SECOND: Mr. Withington to be authorized to proceed to England as fast as his time will permit and secure from all concerned their signatures to an out and out Deed of Conveyance. Your Company cabling him the necessary amount for the purchase, namely Thirty Thousand Dollars (\$30,000.00). Cost of exchange and cable to be chargeable against purchase price.

THIRD: After the completion of the above, your Company to then pay over to me the balance of the purchase price agreed upon as one hundred and twenty thousand dollars (\$120,000.00).

There should be a reply in writing by you definitely binding your Company to pay \$120,000.00 for the 18/27 undivided interest or in other words paying over to me as Trustee for James L. the difference after Eliza and the Kentwells have been paid together with the advances and expenses.

Yours truly,

JOHN F. COLBURN.

D-8: Copy letter dated March 30, 1910,
Lawrence Kentwell to James L. Holt.

Oxford, 159 Woodstock Rd., March 30-'10

Dear James:

We got your cable this day saying you have received my letter of the 10th inst., and that you would take immediate action and would advise by cable—money—I assume then that the offer we made is satisfactory to you, i.e. \$35,000 cash to be paid us upon our signing all the necessary papers. If that's the case, please cable when this reaches you, as there is someone else in the field and has offered Liza a better proposition, and Annie and Uncle John are not required to release the \$150 a month, which she now gets from Colburn. I presume you have an idea who the party is, he is rather unfriendly to the Waiialua Agricultural Co. and of course he wants the land too. His name is—McCandless.

Eliza R. P. Christian vs.

You can arrange with the Waialua Agri. Co. to instruct their agents in Honolulu to notify their London agents to send for us when they've received your papers, then we will proceed to London and sign them. We want to stand by you and you must act at once.

Uncle John and Liza are not particularly anxious to come back now, since you have arranged matters. Be sure and get the matter fixed as soon as you can as a delay will not be beneficial to either of us. Aloha to all and love from Liza & Uncle to self and family,

Sincerely yours,

LAWRENCE K.

D-9: Copy unsigned letter dated April 8, 1910,
to W. W. Goodale

Note: This letter was an office letter, Castle & Withington to W. W. Goodale. It was agreed however that the cable referred to in the letter is a correct copy and sent on by James L. Holt.

Honolulu, Oahu, T. H., April 8, 1910.

W. W. Goodale, Esq.,

Mgr. Waialua Agcl. Co. Ltd.,
Waialua, Oahu.

Dear Sir:

Enclosed please find besides the abstract of the deed as requested by you the following, Deed, Paakonia to Mahelona, recorded Liber

210 page 405, Deed, Luahiwa to Mahelona, recorded Liber 216 page 102, Deed Luahiwa to Ahia, recorded Liber 217 page 70 and an agreement between John Emmeluth and John and Annie Keahipaka; also an agreement (copy of) between Christian and W. R. Castle to dispose of and consent to any conveyance of his and her interests in the Holt lands within one year. We have paid John Colburn the Three Hundred Dollars and a further sum of \$70 being the expenses incurred in automobile hire and other expenses incurred in Colburn's going to Ewa to secure Christian's signature, which \$70 will be deducted from the amount to be paid upon final settlement being made. The following is a copy of the cable sent on last night.

To Kentwell,

159 Woodstock, Oxford, England.

Divorce is not necessary, Christian settled in friendly manner—await arrival of Withington about the last of this month.

sgn. Holt

Very truly yours,

Eliza R. P. Christian, vs.

D-10: Copy unsigned cablegram dated April 8, 1910, sent to D. L. Withington from the office of Castle & Withington.

SHERMIPPLE BOSTON
WITHINGTON

April 8, 1910

JOHN ISODYNAMIC KENTWELL IM-
POSIBLES WITH CHRISTIAN ADVISED
KIESWEGEN WITHINGTON BIDBANK
EXALTMENT LINK GEGRIMBEKT
EGRATIGNER

(John telegraphed full particulars to Kentwell. The matter is settled with Christian. Advised wait until Withington arrives. Terms of agreement are well known Link. Full particulars follow by mail. Go as soon as possible.)

D-11: Copy unsigned cablegram dated April 11, 1910, sent to D. L. Withington from the office of Castle & Withington.

S262Ny o 9 1111p

Honolulu Apr 11-10

Shermipple, Boston

WITHINGTON TRENT EXHARANET
ESFOLAGATO LINK BEUGLE EXEMP-
TORUM.

Trent (left yesterday) (in the interest of) Link.
(Advise you to) (leave as soon as possible).

D-12: Original letter dated April 12, 1910,
John F. Colburn to W. R. Castle.

Letterhead

Kapiolani Estate, Limited

Honolulu, T. H., April 12, 1910.

Mr. W. R. Castle,

Atty. for the Waialua Agricultural Co.,
City.

Dear Sir:

As Trustee of James L. Holt I will convey to such person as the W. A. Co. will name, all the interest acquired by me under the Trust deed from said Holt dated July 1, 1902, of the Lands of Halemano and Wahiawa in the District of Waialua for the sum of Sixty Thousand Dollars (\$60,000.00) payable upon the execution of the Deed and an agreement to pay a further consideration immediately that the said Company has acquired from Mrs. Eliza Christian her anticipatory interest in said Lands the difference between what said Company shall pay to said Mrs. Christian and the sum of Sixty Thousand Dollars said sum to be so paid to her not to exceed the sum of Thirty Thousand Dollars.

In the event however that, the said Mrs. Christian shall convey her interest in said Lands to L. L. McCandless or some one else not named by the Company then the Company shall pay to me a further sum of Thirty Thousand Dollars.

Upon the payment of Sixty Thousand Dollars one-half of the present rental of said Lands payable to me shall cease to be paid by said Company and upon its having acquired the interest of said Mrs. Christian and paid me the difference of the purchase price or have paid me the further sum of Thirty Thousand Dollars then the whole of the present rent shall cease to be paid.

James L. Holt will if desired join with me in the Conveyance.

You will appreciate the fact that Mr. Holt's interest in these Lands are greater than Mrs. Christian's owing to the fact that John D. Senior had a child with a former wife and lived before its death which interest I take it, has been inherited by John D. Senior and is included in his Conveyance to James L. and then to me.

Expense of papers and stamps to be borne by the Company.

All advances made by you or the Company and the indebtedness to Castle & Cooke Ltd. to be deducted from purchase price.

Yours very truly,

JOHN F. COLBURN.

D-13: Copy unsigned cablegram dated April 12, 1910, from the office of Castle & Withington to D. L. Withington in Boston.

SHERMIPPLE BOSTON April 12, 1910.
WIKINIKONA PIANOTALS DEOXIDATE
LARNACH WAIALUA CONDULCAVI
BOTELLON LINK FLODDEN CAPILE
AMERICA WHERE FILCHED TRENT
CARAMILLAR KENTWELL BULLETOUW
BLUEHWEISS MOVEMENTS.

(Have received your letter of the 4th.) (Employ only if necessary) Larnach. Waialua (depends upon you.) (Have every reason to believe) Link (will keep them supplied with money) (provided they can come) America, where (expect to meet) Trent. (Why do you not communicate with) Kentwell (by cable.) (Try to ascertain) movements.

D-14. Original letter dated April 13, 1910.
John F. Colburn to W. R. Castle.

Letterhead

Kapiolani Estate, Ltd.

Honolulu, T. H., April 13, 1910.

Mr. W. R. Castle,
City.

Dear Sir:

Mr. Holt informs me that he has exhibited to you the cable received by him from Mr.

Kentwell of this a. m. The same is an answer to the cable sent by Holt and I yesterday afternoon which reads as follows:

Honolulu, April 12, 1910.

Kentwell,

159 Woodstock, Oxford.

Await Withington arrival with cash—terms your letter March 8th accepted—cable immediate acceptance.

Signed, HOLT.

and his answer is:

Oscro, Honolulu.

Accept—when did sail Withington.

Signed, KENTWELL.

therefore the matter is up to you to instruct Withington to advise Kentwell when he can sail for England and if possible to proceed forthwith and you should make your financial arrangements whereby Mr. Withington will get the requisite amount \$30,000.00 to pay Mrs. Christian and the Kentwells and secure their deed.

I take this to be exceedingly good prospects for the W. A. Co. to clinch this matter if there are no further delays upon the part of your principals.

I think it would be a good plan to suggest to Withington in your cable that John D. Sr. the father of Eliza Christian to sign the Deed

also for what he might inherit from Eliza in the event that he survives her.

Yours truly,

JOHN F. COLBURN.

D-15: Copy unsigned cablegram dated April 13, 1910, from office of Castle & Withington to D. L. Withington.

SHERMIPPLE, BOSTON April 13, 1910
WIKINEKONA KENTWELL FINGRIGO
HOLT ACCEPT HULAGU WITHINGTON
BULLENKOPF HULPZAAH CICALA-
TURO NACHTWORM KNABENBANK
BESEEMED BELLHUND GUINCHEUR
BRANDIMES INDIGENOUR.

Withington. Kentwell (sends the following message to) Holt. Accept. (When did sail) Withington. (Cable immediately) (date of sailing.) (Credit has been increased to) (\$40,000.) (Are quite willing) (advance at once) (on account of) (proposed purchase) (in order to bind.) (Must get all to sign.)

Eliza R. P. Christian vs.

D-16: Original cablegram dated April 14, 1910,
from D. L. Withington to the office
of Castle & Withington.

Received 3:12PM-P-

April 14th/10

SF 55 Via San Francisco April 14
Boston, Mass. 10

Ola Honolulu.

LUSITANIA TWENTIETH EROTESIS
FROLADO CERTONUS PROFESSOR
GRAY.

WIKINEKONA.

(Lusitania twentieth (Must have more definite
instructions) (What is the offer) (May we
consult) Professor Gray)

D-17: Original letter dated April 15, 1910, D.
L. Withington to Prof. John C. Gray.
Boston, Mass., April 15, 1910.

John C. Gray, Esq.,
60 State Street,
Boston, Mass.

Dear Professor:

The question which arises under the will of
R. W. Holt, who was an American citizen of the
Hawaiian Islands, married to an Hawaiian wife,
and who died about 1860, leaving four children,
—one daughter, to whom he left 1/4 of his
estate, and three sons, to each of whom he left a
quarter for life with a remainder to their heirs.

There have been changes in the estate but the court has held that such changes did not affect the rights under the will nor work a conversion of property from personal to real estate or vice versa, and the present situation is that the property in question, the daughter having been eliminated is held by three interests. John D. Holt and whoever will succeed to his $\frac{1}{3}$, James R. Holt, and whoever will succeed to his $\frac{1}{3}$, and the other third having vested by the death of Owen J. Holt, in his nine children, is held by various parties, the whole property being leased to the Waialua Agricultural Company. James R. Holt and John D. Holt have conveyed their interests to one John F. Colburn, and J. Lawrence Holt and Robert Holt, sons and only heirs, should James R. Holt now die, of James R. Holt, have joined in this conveyance; John D. Holt is living in England, has been married twice; by his first wife he had a child who outlived the mother by a few hours and died leaving him its only heir. He married again and has one child who is living with him in England. It is proposed to purchase the interest of this child, assuming that should John D. Holt die at this time, she would succeed for \$30,000.

The will is to be found in the case of Long v. Holt, 18 Hawaii 290. That case, and the case of Estate of Holt, 19th Hawaii 78 refer to prior cases in which this will, or some controversy growing out of it was before the Hawaiian Court and with the cases of Carter v.

Davis, 18 Hawaii 349, and Fitchie v. Browne, 18 Hawaii 69, the latter being the case which you argued in the Supreme Court of the United States, will I think contain all that is necessary to understand the state of the Hawaiian law. The value being over \$5,000, as you know, the question would come before the Supreme Court of the United States and therefore its decisions would be conclusive.

I hope to have an answer to my cable requesting authority to secure your opinion this evening or tomorrow morning. I expect to leave for England on Wednesday by the Lusitania, leaving London Monday night.

The points are these: First, what is the character of the remainder in the heirs of John D. Holt?

Second, subsidiary to this, did John B. Holt inherit from his deceased child any interest in that reversion?

Third, if John B. Holt's daughter has a contingent remainder, what form of conveyance should we take as best calculated to secure the title upon the death of John B. Holt.

Fourth, there is a subsidiary question, as the daughter is married, the husband is in Hawaii, but he has agreed to sign the deed, and I may, in case I get authority, ask a question as to the best method of dealing with this situation.

Very sincerely yours,

DAVID L. WITHINGTON.

D-18: Opinion of Prof. John C. Gray dated
April 16, 1910, addressed to
D. L. Withington.

Letterhead

Ropes, Gray & Gorham

Boston, April 16, 1910.

David L. Withington, Esq.,
c/o Whipple, Sears & Ogden,
Tremont Building,
Boston, Mass.

Dear Mr. Withington:

To answer your questions concerning the Holt property:

First: I am of the opinion that the devise to the heirs of the testator's children is a contingent remainder. Since the decision in *Carter v. Davis*, 18 Haw. 429, I do not think there is any doubt on this.

Second: This contingent remainder can be conveyed or released, by any ordinary deed.

Third: Should Mr. John D. Holt adopt a child, could such child take as one of his heirs under his father's will?

I believe the chances to be that the Court would hold that he could not.

The present Chief Justice, in the *Estate of Hannah Maughan*, 3 Haw. 262; and *Estate of Nakuapa*, 3 Haw. 342, after very elaborate consideration, was of opinion that an adopted child could not inherit as heir, and I know of no reason to suppose that he has changed his

mind. His dissenting opinion in *Estate of Nakuapa* is very weighty.

In *Re Estate of Wilhelm*, 13 Haw. 206, the court decided, that unless the articles of adoption expressly provide that the adopted child shall inherit, he cannot do so. Whether he can do so, if the articles do so expressly provide, the court leaves undetermined, but it is impossible to read the opinions without feeling that they do not view Hartwell, C. J.'s doctrine with disfavor.

Of course this is not a case of inheritance. It is a case of the interpretation of a testator's will.

"Heirs" means, in the Law, those who inherit real estate.

If I am right in believing that an adopted child cannot inherit, then when the testator made a devise, to the "Heirs" of his son adopted children of the son were not included in the devise.

The testator might have said, "In the word 'heirs' I mean to include my son's adopted children." But he did not say it. The only person who will have said it, if there is an adoption, will be the son. Now, nothing that the son can say can affect the interpretation of the father's will. Suppose the son should say, "Whereas there is a devise in my father's will to my heirs, I hereby declare that Mr. Roosevelt shall be taken to be my heir." Mr. Roosevelt

assuredly would not take; and it is just the same if he says, "My adopted children shall be my heirs."

The language in Section 1 of the Revised Laws, establishing the Common Law "except as fixed by Hawaiian judicial precedent," does not, I think, mean that the Supreme Court cannot overrule one of its own decisions, but only that a decision of the Court, before the introduction of the Common Law, shall have the weight that a precedent has in the Common Law.

My charge is \$300. I have to go away after writing this before the stenographer has copied it, and I have left word that it should be signed for me.

Yours very truly,

JOHN C. GRAY.

RG

D-19: Copy unsigned cablegram dated April 15, 1910, from office of Castle & Withington to D. L. Withington.

SHERMIPPLE BOSTON (Sent April 15th)
WIKINEKONA PHOENICATO CERTA-
ZIONE HOLT ABSTRACT DUFTENDU
PENNELLEARE ERTOSSENDE PENNI-
FORME.

(In answer to your telegram of the 14th) (advise you to consult—at once) Holt abstract (was forwarded by express company) (April 9th) (will give you definite instructions on or before) (April 18th)

D-20: Original cablegram dated April 16, 1910,
from D. L. Withington to the office of
Castle & Withington

Boston-Mass 9

11 VIA SE April 16th.

Ola Honolulu

Gray advises contingent remainder transfer-
able approves insuring.

D-21: Copy unsigned cablegram dated April 16,
1910, from office of Castle & Withington
to D. L. Withington

April 16th 1910

NYG 43 HONOLULU 27/26

SHERMIPPLE BOSTON

WIKINEKONA ELIZA AND JOHN D
ACCEPT NACHTSTOEL ENSAYALEIS
PROSPECTIVE INTEREST, ANNIE
KENTWELL WANTS MUSIQUETA HER
INTEREST MAKE EXOBSECRAS DELA-
TANDOS NACHTVOLK PRICE TO WAIA-
LUA IDEATION

(Eliza and John D. accept \$30,000. Must be
inclusive of prospective interest. Annie Kent-
well wants \$5000 her interest. Make less if pos-
sible. Must not exceed \$35,000. Price to Waia-
lua must be kept secret.)

D-22: Copy unsigned cablegram dated April 19, 1910, from office of Castle & Withington to D. L. Withington

April 19, 1910.

SHERMIPPLE BOSTON

FORWARD WIKINEKONA KENTWELL
FINGRIGO HOLT BIBILEM YOU
THOUGH LINK OFFERS GRIFFINISM.

Forward Withington. Kentwell fingrigo (sends following message to) Holt. Bibilem (will agree to abide by) you, though Link offers griffinism (a better proposition).

D-23: Original letter and envelope April 25, 1910, L. K. Kentwell to D. L. Withington
Oxford 159 Woodstock Rd

Apr. 25th, '10

Dear Mr. Withington:

I have just received your message ex Lusitania and am glad to hear of your almost—sure arrival at London tonight (*baring* shipwreck and disastrous railroad mishap) and I hope this will find you (in both terra firma and terra cotta) in your usual good spirits, the latter, according to recent Honolulu papers is rather rare in the Paradise of the Pacific, and evidently was the cause of agitation for government by commission, but *no* so in gay London.

Eliza R. P. Christian vs.

Your departure was cabled to us by J. L. Holt and of course we were expecting you on the *Lusitania*, but now that the expectation has materialized we all extend you our heartiest welcome and bid you goodspeed and welcome to Oxford, especially when you have the ready cash—the latter intelligence also came by a cable message, but of course it requires your confirmation and willingness to shell out as soon as you get up here, at any rate we shall all be mighty glad to see a KANAKA.—aloha.

Very sincerely your

L. K. KENTWELL :

(Copy of face of envelope)

L. K. Kentwell

Postmarked

Oxford Ap. 2 5'10

D. L. Withington Esq.

30 Little Russel Street

London W. C.

Passenger

Ex *Lusitania*

D-24: Original letter dated April 25, 1910,
John F. Colburn to W. A. Greenwell

Letterhead

Kapiolani Estate, Ltd.

Honolulu, T. H., April 25, 1910.

Mr. W. A. Greenwell,
Representing Mr. W. R. Castle,
City.

Dear Sir:

I am in receipt of a copy of the proposed agreement between J. L. Holt, myself and Mr. Castle together with a copy of the proposed deed to be executed by us. Speaking for myself I want to say that I will not consent to sign this Deed carrying with it as it does a warranty upon my part for the title. I want to say again right here that Mr. Holt and I have agreed to sell to Mr. Castle for account of the Waialua Agricultural Company the lands in the District of Waialua at present held by said Company under lease from myself and other interested ones of the Holt Estate upon the following terms namely, for the sum of One Hundred and Twenty Thousand Dollars (\$120,000.00) Mr. Holt and I convey all our interest in said lands free and clear of all incumbrances, such as the lien upon said lands made to said Castle and now held by Castle & Cooke Ltd., and as well as the interest of Eliza Christian and her husband, and also John D. Holt Sr. and also Mrs. Annie Kentwell.

Eliza R. P. Christian vs.

Mr. Castle is well aware of the title that we offer to sell viz. 18/27 of the Holt Lands at Waialua such as we have it, a warranty, if any extending only to any and all persons claiming by or through us. Therefore there must be a modification in your Document.

Yours truly,

JOHN F. COLBURN

D-25: Original cablegram dated April 26, 1910,
from D. L. Withington to the office of
Castle & Withington.

Received 2:16PM.

April 26th 1910.

F. HU. 33. LONDON, 11,

OLA,

HONOLULU...

Demand payment in cash are now objecting

CACABABUNT

FREGARONO

INSURANCE

we do not consider it advisable

BETUTORING

WITHOUT

TRENT

will not arrive until

BLOCKSHUR

MONDAY.

LOTHROP

D-26: Unsigned copy of letter dated April 28, 1910, James L. Holt to L. L. McCandless.

Honolulu, April 28, 1910.

Hon. L. L. McCandless,
Honolulu.

Dear Sir:

You are hereby notified that under date of March 8, 1910, I received, in writing, an offer from Elizâ Christian, J. D. Holt and Annie Kentwell, offering to sell and convey to me their respective interests in the lands of the Estate of R. W. Holt, deceased, situate in the District of Waialua, for a specified sum of money, which offer, as made, was duly accepted by me on the 12th day of April, A. D. 1910; and the contract of sale so made is now being closed in England, I having sent an agent to England for that purpose. And you are further notified that, in other ways, I have expended and am expending large sums of money on the faith of the said contract and have claimed and continued to claim that said contract covering said transaction is in force and effect, and being informed that you personally or through your agents are seeking to purchase some or all of the interests in question, which are under contract of sale to me as aforesaid, I hereby notify you, your agents and whom it may concern of the existence of a valid contract of sale in my favor covering the property in question, and warn

you from purchasing or attempting to purchase or otherwise contract for any of the lands in question from any of the parties to said contract.

Yours very truly

D-27: Copy unsigned cablegram dated April 28, 1910, from office of Castle & Withington to D. L. Withington

April 28, 1910.

LOTHROP

LONDON (ENGLAND)

CLEAVER (a delay is dangerous). BETUTORED (we consider it advisable) CANCEROUS (close immediately) BLISSLESS (before arrival) TRENT ERUSCORUM (excluding insurance) CLAUSE. COLIFLOR (Have deeds executed at once and forwarded) GELOTIANOS (Authorize you to pay) LIZA NACHSTOEL (\$30,000.), ANNIE, MUSIQUETA (\$5000), JACHERANT (on terms specified in their letter of) PENDONES (March 8th) HIPPODOCE (Must have a definite reply) McCANDLESS FRANJES (have been notified) HORSINESS (Our rights must be upheld)

D-28: Original unsigned cablegram dated April
28, 1910 from D. L. Withington to the
office of Castle & Withington

Received 3.15PM-S-

28th, April, 1910

35 LONDON 3

OLA HONOLULU...

BIPATENTEM

(Awaiting answer)

D-29: Original unsigned cablegram dated April
29, 1910, from D. L. Withington to the
office of Castle & Withington

Received 2.22 PM

29th. April 1910.

F. HU. 37. OXFORD, 8,

OLA,

HONOLULU...

Deeds will be executed

COLICOS

MONDAY

as far as we can understand

KALKLEBER

have instructions to pay

GEMEAUX

without signature of

INDVULSOS HUSBAND.

Eliza R. P. Christian vs.

D-30: Copy of cablegram not dated,
James L. Holt to L. K. Kentwell

KENTWELL:

159 WOODSTOCK, OXFORD

Withington Leave Twentieth Lusitana to
settle Execute all conveyance to me for \$3500.

HOLT

Note: The above proposed cable is in J. L.
Holt's handwriting and the coding in the
handwriting of W. R. Castle, and the
cable as sent appears below:

Cabled as above address

(will leave)

WITHINGTON

EXERTMENT.

(Apr 20)

LUSITANIA

PENILESS

(must get all to sign) (deed of conveyance)

INDIGENOUS

COLEPIN

TO ME

HOLT

D-31: Original cablegram dated April 29, 1910,
L. K. Kentwell to James L. Holt.

(Osco being J. L. Holt's cable address)

Apl 29th 10

Received 2.15 AM XC

3 Oxford 4 Osco Honolulu

Agreeable

Kentwell

Waialua etc. Co., et al.

943

D-32: Copy cablegram dated April 29, 1910,
from office of Castle & Withington
to D. L. Withington.

April 29/10

LOTHROP

OXFORD

KALMUCOS

(Your understanding is correct)

BEMODDEREN

(Act accordingly)

OLA

D-33: Original cablegram dated April 30, 1910,
from D. L. Withington to the office of
Castle & Withington

Apl 30th 10

3. London 3 Ola Honolulu
Grantee.

D-34: Copy cablegram dated April 30, 1910.
from office of Castle & Withington
to D. L. Withington

April 30/1910

Lothrop

London.

James Lawrence Holt

Ola

D-35: Original letter dated May 19, 1910,
together with Bank slips and receipts
enclosed, D. L. Withington to
Castle & Withington.

Boston, Mass., May 19, 1910.

Messrs. Castle & Withington,
Honolulu, T. H.

Gentlemen:

I enclose an account of my expenditures on the trip abroad, worked out as well as I can in pounds. I am not at all sure about this account to the cents or shillings, as I changed money at 4.85 or 4.85 and 4.88 $\frac{1}{2}$, and I converted some money the other way, on which I lost quite a large amount.

I have returned to Welch & Company my letter of credit, with balance of £617. The account will then stand: Received £8,000; paid Eliza Holt Christian \$30,000 at 4.88 $\frac{1}{2}$, £6,141.5; Annie Holt Kentwell, \$5,000 at 4.88 $\frac{1}{2}$, £1,023.10.10. John C. Gray's fee £61.17.6. Expenses to and from New York, including hotel and steamer fare to London, and expenses both ways £41.15.3. Steamer fare returning £28. Expenses while in London, exclusive of the execution of the deed, £18.7. Cablegrams paid in London, £7.15. Paid in America by self, J. B. Castle, Whipple, Sears & Ogden, £6.5. Expenses incident to deed, including American Consul, solicitor, hotel and hack bills, £5.15. Balance

spent by myself on personal account, £48.9.6, which should be charged up to me at a rate of about 4.85 or \$235.20.

I did not pay quite as much as we could have been forced to pay, possibly. The figure 4.88 $\frac{1}{2}$ included exchange, which I charged to them. They agreed to take it as if it were paid in New York on that day and it was figured out by the Canadian Bank. Outside of Gray's fee, all the expenses of the trip amounted to about \$500, and as the expenses over and back by this fast line were about \$325, and this includes two trips to Oxford, cabling and wireless and telegrams which amount to nearly \$100, I do not think it excessive. I was assisted by a young man who works for my brother. My brother would take no pay for him but I shall make him a present. I had him at my service all the time and took him with me a large part. I was going at such a rate that it required someone who knew London and the country.

I enclose the only receipts, which I have with me,—Professor Gray's, the solicitor's and a memoranda given me by the Canadian Bank.

In reference to insurance, I fear we will have trouble. I urged insisting on that in my cablegrams and have written pretty comprehensively about it. It does not seem to me to be advisable to write without hearing further from you. My suggestion would be that we pay Kentwell a small sum to get the insurance effected. I think I wrote you what it could be done for,—a com-

paratively small sum, and think that the best plan would be to insure on payments for, say, 15 years, as it is not likely that the old man will live beyond that time. The difference is not very great, however, between that and the plan you suggest, namely, for life insurance.

I desire to acknowledge the receipt of your letter of May 7th, enclosing copy of letter to Chickering. My cable must have been misinterpreted about the execution in duplicate.

Very truly yours,

DAVID L. WITHINGTON

(Enclosed slips are as follows:

(1) Undated slip on a blank of The Canadian Bank of Commerce, London, in longhand, reading:

\$30,000	@	488½	=	£ 6141- 5- 0
\$ 5,000		do	=	£ 1023-10-10
Cash				45- 4- 2

£7210:-

61-16-6

Holt

(2) Undated slip of The Canadian Bank of Commerce, London, showing various figures, apparently an attempt to arrive at the figure in English money of Prof. John C. Gray's fee of \$300.

On the back of this slip are the words in longhand:

Mrs. Annie Holt Kentwell 5,000

Mrs. Eliza R. P. Christian 30,000

the "Mrs." in each instance being in another hand.

(3) Receipt dated May 2, 1910, by Messrs. Hewitt, Urquhards & Woolacott of London for £1:9:0.

(4) Receipt dated May 14, 1910, by Prof. John C. Gray for \$300.

The foregoing slips marked (1) and (2), being original exhibits, are, by order of the Supreme Court, made a part of this record and statement.)

D-36: Original letter dated April 21, 1910.

James L. Holt to Waialua Agricultural Company, Ltd., et al.

Honolulu, April 21, 1910.

To the Waialua Agricultural Co., Ltd.,

W. R. Castle, Trustee,

and Whom it may Concern.

Dear Sirs:

You are hereby notified that the temporary agreement in reference to the sale of certain interests in the Holt lands at Waialua, dated the 15th day of April, 1910, and signed by me on that date, was signed by me upon the express condition and understanding that John F. Colburn, Trustee, should also sign the same and

that if he failed or refused to sign, that said instrument should have no force or effect whatsoever and should be held to be an uncompleted instrument, never having taken effect.

This notice is given to save my rights and to avoid all misunderstanding as to the paper above referred to pending further negotiations with you as to the sale of the lands in question.

Yours very truly,

JAMES L. HOLT

D-37: Original unsigned draft of agreement dated April 15, 1910, between James L. Holt, John F. Colburn and William R. Castle, Trustee, regarding sale of two-thirds interest in Holt lands for \$120,000.

(This original exhibit, being impossible to describe accurately, is by order of the Supreme Court of Hawaii made a part of this record and incorporated herein by reference.)

THIS AGREEMENT, Made this 15th day of April, A. D. 1910, between JAMES L. HOLT, of the City and County of Honolulu, Territory of Hawaii, of the first part, hereinafter referred to as "Holt" or "J. L. Holt," JOHN F. COLBURN, of said Honolulu, of the second part, hereinafter referred to as "Colburn" or "John F. Colburn," and WILLIAM R. CASTLE, TRUSTEE, of said Honolulu, of the third part, hereinafter referred to as the "Buyer,"

WITNESSETH THAT:

Whereas, upon an understanding and agreement that said Holt should acquire all of the rights, interests or shares of Eliza Christian, John D. Holt and Annie Kentwell, present or prospective, in and to the lands of the Estate of R. W. Holt, Deceased, situate in the District of Waialua, in said City and County of Honolulu, and should convey such rights, interests and shares to such person or persons, association or associations, corporation or corporations as the said Buyer should direct; and that said Holt and Colburn (the latter acting under a trust deed) should convey all of the right, share or interest, present or prospective, of said Holt in and to said lands of said Estate of R. W. Holt, Deceased, in said District of Waialua, which interests, shares and estates shall not be less than two (2) full thirds of said property, free from all life or other intermediary estates or incumbrances; and said Buyer has already expended and will hereafter expend large sums of money to secure the said shares and interests as aforesaid, or part of them, and to perfect all titles thus acquired or to be acquired which are to be sold and conveyed as upon the above understanding and agreement:

NOW, THEREFORE,

Said Holt and Colburn, in consideration of such expenditure so made and to be made hereafter at their or either of their requests, and of One Dollar to each of them paid by said

Buyer, the receipt whereof is acknowledged, do hereby promise, covenant and agree to and with said Buyer:

1st. To proceed without delay and as rapidly as possible with all and every negotiation and proceeding necessary to secure such shares, titles and interests of said Eliza Christian, John D. Holt, Annie Kentwell, and all and every intermediate estate and other title necessary to be acquired, secured or extinguished in order to vest a full two-third ($\frac{2}{3}$) share or interest, free from all incumbrances, in said James L. Holt, either personally or as trustee; and *to expend if necessary up to \$40,000 in so doing and

2nd. That, when so secured, all of said shares or interests, or, if not so fully secured, then such part or portions thereof as may be possible to secure and to be conveyed to said Holt personally or as Trustee, to sell and convey by good and sufficient deed or deeds of conveyance, with full releases of dower, at the expense of said Buyer, to such person or persons, association or associations, corporation or corporations, as said Buyer shall direct, for the consideration of One Hundred Twenty Thousand Dollars (\$120,000) for such full two-thirds ($\frac{2}{3}$) unincumbered interest, at and after said rate for any part thereof which may be secured.

From the consideration to be paid by such persons, associations or corporations as afore-

*Beginning with "to" and to end of paragraph written in ink in longhand.

1. said the said Buyer may first deduct all moneys by him paid, or paid on his account, or to be paid hereafter, including the legal interest, on account of these proceedings from the inception thereof until every title shall be secured as aforesaid, and also all moneys due to him, the said Buyer, for loans and advances made to or on account of either said Holt or Colburn; excepting, however, the expense of the trip of David L. Withington to England in this behalf, such trip to be made in or about the month of April, 1910.

AND THE SAID BUYER agrees that upon notice by him received that said shares or interests in said lands in said Waialua have been secured by said James L. Holt, either personally or as trustee, or in any way in his behalf, he will then and thereupon give notice to said parties of the first and second part to what persons, associations or corporations the said property and interests in property shall be conveyed, and will then present a deed or deeds containing full warrants of title, free from incumbrances and other matters, to convey a complete title, which the said parties of the first and second parts agree shall be duly executed, in accordance with this agreement ~~*a copy of a draft of which deed is hereto attached, and the original~~ upon the execution thereof will pay

*Interlineation written in pencil and then lined out.

over or cause to be paid over all moneys which may be due hereunder to the persons entitled to receive the same.

IT IS AGREED that the term of this agreement shall be ONE YEAR from date hereof, and that if said parties of the first and second part cannot then be prepared to make conveyances hereinbefore agreed to be made, they shall, upon the request of the said Buyer, refund to the Buyer all moneys advanced upon the consideration of this agreement, together with legal interest, as well as refund all amounts due by either of said parties to or on account of said Buyer, with interest.

(BUT THIS AGREEMENT shall not be (enforcible against the said Buyer unless he OUT (shall be fully satisfied with the title offered (to be conveyed to him by said parties of the (first and second part.

IN WITNESS WHEREOF, the said parties of the first, ~~and second part~~ second and third part have hereunto set their hands, the day and year first aforesaid.

(NOTE: In paragraph "2nd" of the instrument the words "when so secured" are underscored in pencil, "at the expense of the Buyer" in red ink over pencil, and "until every title shall be secured as aforesaid" in pencil; and the numbers "2" and "1" in the margin are in

red ink over pencil. Against the next to last paragraph appears a bracket with "OUT" written in longhand, both in blue pencil.)

21. Deed dated May 2, 1910, John Dominis Holt, Eliza R. P. Christian, Annie Holt Kentwell, Lawrence Holt Kentwell, and Albert Christian by way of consent, to James Lawrence Holt. Deed duly recorded June 23, 1910, and being in evidence as Petitioner's Exhibit A-21, and being also Exhibit B to the original petition herein. This is the deed cancellation of which, as to Eliza R. P. Christian, has been prayed for in the original and amended petitions. It is an original exhibit, a part of this record and statement by order of the Supreme Court of Hawaii, a photostatic reproduction of the page bearing the signatures being incorporated herein at the end of this volume. It follows in full:

Stamp \$50 Stamp \$50 Stamp \$10 Stamp \$10

KNOW ALL MEN BY THESE PRESENTS that we JOHN DOMINIS HOLT Widower, ELIZA R. P. CHRISTIAN Wife of Albert Christian daughter ~~of~~ and sole heir ~~and~~ of said John Dominis Holt ANNIE HOLT KENTWELL and LAWRENCE K. KENTWELL Husband of the said Annie Holt Kentwell all now commorant at Oxford in the County of Oxford in the United Kingdom of Great Britain and Ireland hereafter termed the Grantors, in consideration of the sum of Thirty-five Thousand dollars (\$35,000.00) to them in hand paid by James Lawrence Holt of Honolulu in the Territory of Hawaii in the

United States of America, hereafter termed the Grantee the receipt of which sum is hereby acknowledged have given granted bargained sold and conveyed and by these presents do give grant bargain sell and convey unto the said James Lawrence Holt the said grantee one undivided third part or interest in and to the following parcels of land and each of them namely:

1. Ahupuaa of Paalaa being Apana 34 of L.C.A. 7713, R.P. 4475 to V. Kamamalu, containing an area of 12237 acres, more or less.
2. Ahupuaa of Wahiawa being R.P. (Grant) 973, containing an area of 1924 acres more or less.
3. R.P. (Grant) 235 to Jerome Topliffe and Louis Johnson containing an area of 36 acres more or less.
4. R.P. (Grant) 238 to J. F. Anderson and F. Davis containing 25.8 acres more or less.
5. R.P. (Grant) 431, containing an area of 100 acres more or less.

Stamp \$10 Stamp \$10

All of said lands being situated in the district of Waialua in the Island of Oahu and Territory of Hawaii aforesaid; intending hereby to convey all the interest of the said Grantors whether present prospective or in remainder vested or contingent, of every name and description in and to said lands or which they or either of them may hereafter acquire in and to the said

lands and particularly every interest which the said Grantors or either of them may now have or may hereafter acquire under the Will of R. W. Holt deceased the father of said John Dominus Holt and grandfather of said Eliza R.W.—V.C. not including Makaha R. P. Christian and Annie Holt Kentwell / subject however to a certain deed of trust made by said James Lawrence Holt, the Grantee, to John F. Colburn, and to a certain Lease dated the First day of April One thousand nine hundred and five made by Carlos A. Long Administrator and others including the Grantors herein to the Waiialua Agricultural Company, Limited, both of which instruments are of record in the Registry Office of said Territory but intending to convey all the rights of the Grantors and each of them against said Trustee and said Company and under said Deed and Lease the said Grantors assigning and setting over to the said Grantee all claims and demands which they may have arising out of either said instruments or in any other way against the said James Lawrence Holt the said Waiialua Agricultural Company Limited or the said John F. Colburn said Trustee save and except the right to the personal estate of the said R. W. Holt which may be in the hands of said John F. Colburn Trustee it being the intention to convey all the interests of the said Grantors in the estate left by said R. W. Holt

or the property into which it has been
R.W.—V.C. not including Makaha
converted / with the exception of the said personal estate.

To have and to hold to the said James Lawrence Holt the Grantee his heirs and assigns to his and their use and behoof for ever.

The said Grantors for themselves their heirs executors and administrators covenant with the said Grantee his heirs executors administrators and assigns that they have good title in and to the described premises that they have good right to convey the same that the same are free from incumbrances except as aforesaid and that they will warrant and defend the same against the claims and demands of all persons except as aforesaid and that they and their heirs executors and administrators will on demand of said Grantee his heirs executors administrators or assigns execute to him or them such instruments or instrument as may be necessary or by him or them deemed advisable at any time to perfect the title in the Grantee his heirs executors administrator and assigns in and to that portion of the estate of R. W. Holt devised by his Will to John Dominus Holt and at his death to his heirs and assigns.

IN WITNESS whereof the Grantors have set their hands and seals this second day of May One Thousand nine hundred and ten, the said Albert Christian Husband of said Eliza R. P. Christian joining in consent hereto by a

separate instrument executed within said Territory of Hawaii.

JOHN D. HOLT (Seal)

ELIZA R. P. CHRISTIAN "

ANNIE HOLT KENTWELL "

ALBERT CHRISTIAN "

LAWRENCE K. KENTWELL "

Witness

DAVID L. WITHINGTON

Witness to signature of Albert Christian

W. H. CHICKERING

ROBERT L. COLBURN

Kingdom of Great Britain and Ireland

City of London, England,

United States Consulate General.

On this the 2nd day of May A. D. 1910, personally appeared before me John Dominus Holt, widower, Eliza R. P. Christian wife of Albert Christian, Annie Holt Kentwell and Lawrence K. Kentwell, her husband, satisfactorily proved to me to be the persons described in and who executed the foregoing Instrument by the oath of David L. Withington, a credible witness for that purpose, to me known and by me duly sworn, and they the said John Dominus Holt, Eliza R. P. Christian, Annie Holt Kentwell and Lawrence K. Kentwell acknowledged that they executed the same freely and voluntarily for the uses and purposes therein set forth.

Eliza R. P. Christian vs.

Witness my hand and seal of office at London,
England this the 2nd day of May A. D. 1910.
#2579

[Seal] RICHARD WESTACOTT
Vice Consul of the United States of America at
London, England.

UNITED STATES CONSULATE
GENERAL, LONDON
STAMP

\$2 Consulate General.

State of California

City and County of San Francisco—ss:

On this sixteenth day of May A. D. 1910 before me personally appeared Albert Christian to me known to be one of the persons referred to in the within instrument and therein described as the husband of Eliza R. P. Christian and being one of the persons who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

[Notarial Seal] CHARLES EDELMAN
Notary Public in and for the City and County
of San Francisco, State of California.

My commission expires April 9, 1914.

I hereby certify that the words "of" and "and" line three page one were struck out and the words "and" and "of" inserted respectively in their place and the words "not including Makaha" line eight page two and the words

"not including Makaha" line twenty-six page two were respectively interlineated, all before signature and execution by Albert Christian.

[Notarial Seal] CHARLES EDELMAN,

Notary Public in and for the City and County of San Francisco, State of California.
My commission expires April 9, 1914.

And I further certify that the words "and" and "of" in the third line of page one and the words "not including Makaha" in the eighth line of page two, and the words "not including Makaha" in the twenty-sixth line of page two were made before the execution of said instrument by the said Albert Christian.

[Notarial Seal] CHARLES EDELMAN,

Notary Public.

State of California.

City and County of San Francisco.—ss.

I, H. I. MULCREVY, Clerk of the Superior Court of the State of California, in and for the City and County of San Francisco, which Court is a Court of Record having a seal, do hereby certify that Charles Edelman, by and before whom the foregoing acknowledgment was taken was, at the time of taking the same, a Notary Public residing in said City and County, and duly authorized by said State to take and certify acknowledgments or proofs of deed of land in said State; and further, that I am well

acquainted with the handwriting of said Charles Edelman, and that I verily believe that the signature to said certificate of acknowledgment is genuine.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of said Court, this 16th day of May, 1910.

[Seal of the Court] H. I. MULCREVY,
County Clerk and Ex-Officio Clerk of the
Superior Court.

22. . Deed dated May 28, 1910, James Lawrence Holt and John F. Colburn Trustee to William R. Castle Trustee, conveying everything acquired by said James L. Holt by virtue of the deed of May 2, 1910 (Exhibit A-21 next above) and his own and the Colburn interest as trustee in the lands as well, being in all an undivided $\frac{2}{3}$ share or part in fee of said Holt lands. Deed duly recorded May 31, 1910, being in evidence as Petitioner's Exhibit A-22, and being also Exhibit C to the original petition herein. The deed reads as follows:

Stamp.	Stamp	Stamp	Stamp	Stamp
\$50	\$50	\$50	\$50	\$50
Stamp	Stamp	Stamp		
\$50	\$50	\$50		

THIS INDENTURE, made this 28th day of May, A. D. 1910, by and between JAMES LAWRENCE HOLT, party of the first part, JOHN F. COLBURN, TRUSTEE for James Lawrence Holt, party of the second part, and

WILLIAM R. CASTLE, TRUSTEE, party of the third part, all of Honolulu, City and County of Honolulu, Territory of Hawaii:

WITNESSETH:

Stamp Stamp Stamp Stamp
\$50 \$50 \$50 \$50

That in consideration of **ONE HUNDRED TWENTY THOUSAND DOLLARS** (\$120,000) to the said **JAMES LAWRENCE HOLT** and **JOHN F. COLBURN, TRUSTEE**, in hand paid by the said **WILLIAM R. CASTLE, TRUSTEE**, the receipt whereof is hereby acknowledged, the said **JAMES LAWRENCE HOLT** and **JOHN F. COLBURN, TRUSTEE**, do, and each of them does, give, grant, bargain, sell and convey unto the said **WILLIAM R. CASTLE, TRUSTEE**, his heirs and assigns, a two-thirds ($\frac{2}{3}$) undivided share or part of all those certain pieces or parcels of land lying and situate in the District of Waialua in the City and County of Honolulu aforesaid, known as the "Holt Estate Lands," to-wit:

1. The land known as the **Ahupuaa** of **Paalaa**, being **Apana 34** of the land described in **Royal Patent 4475**, on **Land Commission Award 7713** to **V. Kaniamalu**.

22. The land at **Wahiawa** mentioned or described in **Royal Patent (Grant) 973** to **James Robinson, Robert Lawrence** and **Robert W. Holt**.

3. The land at Paukauila mentioned or described in Royal Patent (Grant) 431 to Kauohanui.

4. The land at Kamananui mentioned or described in Royal Patent (Grant) 235 to Jerome Topliff and Lewis Johnson.

5. The land at Kamananui mentioned or described in Royal Patent (Grant) 238 to John F. Anderson and Franklin Davis.

6. And all Kuleanas or Grants lying within the above lands and premises, or any or each of them, to which the said James Lawrence Holt and John F. Colburn Trustee, or either of them, claim title or ownership.

Together with all the rents, income, right, title, interest, estate, property, claims and demands, in law or in equity, vested, contingent or in expectation, of the said James Lawrence Holt and John F. Colburn, Trustee, and each of them, in and to or arising out of or in connection with said pieces or parcels of land hereinbefore described.

TO HAVE AND TO HOLD all and singular the above mentioned and described premises, properties and rights, together with all and singular the tenements, rights, easements, privileges and appurtenances to the same belonging or appertaining or held or enjoyed, unto the said William R. Castle, Trustee, his heirs and assigns forever.

And the said James Lawrence Holt, for himself and for his heirs, executors and administrators, covenants and agrees with the said William R. Castle, Trustee, his heirs and assigns, that he and the said John F. Colburn, Trustee, are seized in fee of an undivided two-thirds ($\frac{2}{3}$) part or share of the said pieces or parcels of land hereinbefore described, with the appurtenances thereunto belonging; that the said undivided two-thirds ($\frac{2}{3}$) part or share of the said pieces or parcels of land hereinbefore described are free and clear of all incumbrances of whatsoever nature or kind; that they have good right to sell and convey the same as aforesaid; that he, the said James Lawrence Holt, will and his heirs, executors and administrators shall warrant and defend the same to the said William R. Castle, Trustee, his heirs and assigns, against the lawful claims and demands of all persons whomsoever; and further, that the said James Lawrence Holt and John F. Colburn, Trustee, and all persons claiming by, through or under them and each of them, will do and execute, acknowledge and deliver all such further deeds, transfers and assurances for the better and more effectually assuring, conveying and confirming unto the said William R. Castle, Trustee, his heirs and assigns, all and singular the property hereby conveyed or intended to be conveyed, as by him or them or by

his or their counsel shall be required, and that the said William R. Castle, Trustee, his heirs and assigns, shall be held harmless and shall not be liable or responsible in any manner to see to the application of the purchase price hereof.

And James R. Holt, of said Honolulu, in consideration of the premises and of the sum of One Dollar to him paid by the said William R. Castle, Trustee, the receipt whereof is hereby acknowledged, does bargain, sell, remise, release, quitclaim, convey and confirm to the said William R. Castle, Trustee, his heirs and assigns forever, all his estate, right, title, interest, claim and demand of whatsoever nature or kind, and whether present, prospective, in expectancy or otherwise, in, to or arising out of or in connection with the premises and property hereby conveyed or intended to be conveyed.

AND Lokalia Holt, wife of said James R. Holt, in consideration of the premises and of the sum of One Dollar to her paid by said William R. Castle, Trustee, the receipt whereof is hereby acknowledged, does bargain, sell, remise, release, quitclaim, convey and confirm to him, his heirs and assigns, all her estate, right, title, interest, claim and demand of whatsoever nature or kind, and whether present, prospective, in expectancy or otherwise, including dower, in, to or arising out of or in connection with the premises and property hereby conveyed or intended to be conveyed.

And Lena S. Holt, wife of said James Lawrence Holt, in consideration of One Dollar to her paid, the receipt whereof is hereby acknowledged, does remise, release, quitclaim and convey to the said William R. Castle, Trustee, his heirs and assigns, all her right, title, interest or claim of dower in and to the premises and property hereby conveyed or intended to be conveyed.

IN WITNESS WHEREOF, the said James Lawrence Holt, John F. Colburn, Trustee, James R. Holt, Lokalia Holt and Lena S. Holt, have hereto set their hands and seals the day and year first above written.

JAMES LAWRENCE HOLT

JOHN F. COLBURN,

Trustee for James L. Holt.

JAMES R. HOLT,

LENA S. HOLT,

LOKALIA HOLT.

Territory of Hawaii,
City and County of Honolulu,
District of Honolulu—ss.

On the 28th day of May, A. D. 1910, personally appeared before me James Lawrence Holt and Lena S. Holt, his wife, both known to me, and on this 31st day of May, A. D. 1910, personally appeared before me John F. Colburn, Trustee for James L. Holt, and James R. Holt and Lokalia Holt, his wife, also known to me to be the persons described in and who exe-

cuted the foregoing instrument, who severally acknowledged to me that they executed the same freely and voluntarily and for the uses and purposes therein set forth. And the said John F. Colburn, further acknowledged to me that he executed the said instrument as such Trustee.

[Notarial Seal]

N. FERNANDEZ,

Notary Public First Judicial Circuit.

23. May 17, 1920. The Helemano Real Estate Trust is organized under a trust declaration between J. R. Galt, A. L. Castle, T. H. Petrie, R. A. Cooke and R. B. Anderson as Trustees. Indenture duly recorded. This real estate trust was organized for the purpose of taking over the Holt lands (or interests in Holt lands) described in Exhibit A-22 above, and of owning, holding, selling, leasing and otherwise dealing in contiguous lands, and in all matters connected therewith, giving the Trustee broad powers of sale, resale, investment, reinvestment, mortgage, lease, or otherwise dealing in real property and interests therein, the shareholders to have no legal or equitable title in the lands. (Ex. A-1.)

24. A direction or instruction to William R. Castle dated May 17, 1920, in accordance with his declaration of trust of May 28, 1910, to convey to the Helemano Real Estate Trust the premises conveyed to him by James L. Holt and John F. Colburn, Trustee, under deed dated May 28, 1910, (Ex. A-22) upon payment of all sums of money expended

by said Castle on account of said purchase or in connection therewith. Signed by Charles H. Atherton, T. H. Petrie and E. D. Tenney by his attorney-in-fact. (Ex. A-32.)

25. Deed dated May 17, 1920, William R. Castle, Trustee, to the Trustees of the Helemano Real Estate Trust, conveying to said Trustees the 2/3 interest in the Holt lands at Waialua and being the interest conveyed to said William R. Castle, Trustee, by deed of James L. Hoyt and John F. Colburn, Trustee, dated May 28, 1910 (Ex. A-22). Consideration \$127,912.49. Deed duly recorded and being in evidence as Petitioner's Exhibit A-2. A copy of this deed is Exhibit D attached to the original petition herein.

26. Lease dated June 23, 1920, from the Trustees of the Helemano Real Estate Trust and the Hawaiian Trust Company, Limited, Trustee of the R. W. Holt Estate, to Waialua Agricultural Company, Limited, of the Holt lands at Waialua. Lease duly recorded, and being in evidence as Petitioner's Exhibit A-3. The lease follows in full.

THIS INDENTURE in quadruplicate made this 23rd day of June, 1920, by and between J. R. GALT, A. L. CASTLE, T. H. PETRIE, R. A. COOKE and R. B. ANDERSON, all of Honolulu, Territory of Hawaii, Trustees of the Helemano Real Estate Trust, hereinafter called "the parties of the first part," HAWAIIAN TRUST COMPANY, LIMITED, a corporation organized and existing under and by virtue of the laws of the Territory of Hawaii, Trustees

under the Will of R. W. Holt, deceased, hereinafter called "The party of the second part," and WAIALUA AGRICULTURAL COMPANY, LIMITED, a corporation organized and existing under and by virtue of the laws of the Territory of Hawaii, hereinafter called "the party of the third part,"

• WITNESSETH:

That the party of the third part is the lessee of certain lands which are described in a lease under which it claims from Carlos A. Long in his capacity as administrator-de-bonis-with the will-annexed of the Estate of R. W. Holt and others to said Waialua Agricultural Company, Limited, dated March 17, 1905, recorded in Liber 263, page 365, Hawaiian Registry of Deeds, leasing the said lands therein described for a term of twenty-five years from the first day of April, 1905.

That the said party of the second part is the duly appointed Trustee of the Estate of R. W. Holt, deceased, by an order duly entered in the Circuit Court of the First Judicial Circuit, Territory of Hawaii, on the 7th day of November, 1910, and as such Trustee is entitled to have paid to it the rent provided for in said lease for the interest held in trust by it for John D. Holt, son of said R. W. Holt, deceased, during his life time, to-wit, one-third of said rent, or the sum of Three Thousand Dollars each year in quarterly payments.

That said parties of the first part have acquired by deed from William R. Castle, Trustee, dated May 17, 1920, and recorded in Liber 553, page 103, said Registry, all and every his estate, right, title and interest in the lands mentioned and described in said lease, and are entitled to have paid to them one-third of the rent provided for in said lease, and are also entitled to have paid to them by the party of the second part the rent paid to it under said lease less commissions during the continuance of the term of said trust, to-wit, the life of said John D. Holt.

That the said parties of the first and third part and the said party of the second part in so far as may be in its power are desirous of extending the term of said lease for a further period of twenty years from the expiration of the same, namely, April 1, 1930.

NOW, THEREFORE, the said parties of the first part, do lease and demise to the said party of the third part, its successors and assigns and the said party of the second part in so far as may be in its power does lease and demise to the said party of the third part, its successors and assigns, all and singular the lands and premises leased and demised by Carlos A. Long in his capacity as administrator-de-bonis-with-the-will-annexed of the Estate of R. W. Holt, in said lease dated March 17, 1905, and particularly described in said lease, all being

situated in the District of Waialua, Island of Oahu, Territory of Hawaii, for the remainder of said term under said lease of March 17, 1905, and for the further term of twenty years from the expiration thereof, namely, to the first day of April, 1950, upon all the terms and conditions set forth in said lease as if the same were repeated and re-incorporated in this instrument.

TO HAVE AND TO HOLD the same for said term of twenty-nine years and nine months from July 1, 1920, at an annual rental of Twenty-five Thousand Two Hundred Dollars (\$25,200.00), said Twenty-five Thousand Two Hundred Dollars to include during the term of said lease dated March 17, 1905, the sum of Six Thousand Dollars (\$6,000.00) payable under said lease to the said Carlos A. Long in his capacity as administrator de-bonis-non-with-the-will-annexed of the Estate of R. W. Holt.

Provided, however, that in case the trust under the will of R. W. Holt, deceased, under which the party of the second part holds said premises as Trustee shall terminate and for that reason such lease shall cease and determine during such extended term, the party of the third part will not hold the party of the second part responsible or liable for any claim or demand for damages for or on account of such termination.

And said party of the third part for itself, its successors and assigns covenants with the

parties of the first part, their successors in trust and assigns and with the party of the second part and its successors that it and they will pay as rent during the remainder of the term of said lease of March 17, 1905, the sum of Nineteen Thousand Two Hundred Dollars (\$19,100.00) per annum in addition to the sum of Six Thousand Dollars (\$6,000.00) per annum payable by said lessee and from and after the first day of April, 1930, the sum of Twenty-five Thousand Two Hundred (\$25,200.) Dollars per annum, said rental to be payable in equal quarterly installments in advance on the first day of April, July, October and January of each year beginning with the first day of July, 1920, in the following proportions, that is to say:

To the said parties of the first part, their successors and assigns, one-half of the annual rental hereby reserved, to-wit, the sum of Twenty-five Thousand Two Hundred Dollars (\$25,200.) and

To the said party of the second part and its successors during the continuance of the term of said trust, to-wit, the life of said John D. Holt, one-half of the annual rental hereby reserved, to-wit the sum of Twenty-five Thousand Two Hundred Dollars (\$25,200.00) and thereafter in whole or in part to the said parties of the first part, their successors and assigns as their interests may appear.

The intention of this instrument being that if, at any time, during the term of the present lease, or extension thereof, the title and estate of the parties of the first part to their full $\frac{2}{3}$ interest in the demised premises becomes lessened in any manner thus reducing their interest or estate then the rental herein reserved to be paid shall be correspondingly reduced.

IN WITNESS WHEREOF the said parties of the first part have set their hands, the said parties of the second and third part have caused their corporate names to be signed and the corporate seals hereto affixed by their proper officers thereunto duly authorized to this and three other instruments of like date and tenor the day and year first above written.

(Execution signatures and acknowledgments follows.)

27. Original document dated July 14, 1921, executed by the owners of not less than three-fourths in value of all the shares of the Helemano Real Estate Trust, terminating said trust and directing the sale of the property of said trust (being the Holt lands) to the Waialua Agricultural Company, Limited, and the distribution of the proceeds of said sale proportionately among the owners of said shares. Document duly recorded. (Ex. A-23.)

28. Original deed dated July 20, 1921, from the Trustees of the Helemano Real Estate Trust to the Waialua Agricultural Company, Limited, convey-

ing a $\frac{2}{3}$ interest in the Holt lands in Waialua for a consideration of \$128,045.49, and being the same property conveyed (Ex. A-2) by William R. Castle, Trustee, to said Trustees. Deed duly recorded. (Ex. A-24.) A copy of this deed is attached to the original petition as Exhibit E.

29. Lease dated January 10, 1923, by Waialua Agricultural Company, Limited, as Lessor, to the Hawaiian Pineapple Company, Limited, as Lessee, demises 12,150 acres of land, including 6,475.45 acres of Holt lands for a term of $17\frac{1}{2}$ years from January 1, 1923, to June 30, 1940, inclusive, for a paid up rental of \$2,109,179.25, with an option of extension for twenty years upon a rental to be agreed upon. The lease reserves to the Lessor all water rights appurtenant, waters above and below the surface including freshet and storm waters, together with the right to take, store, develop or divert the same, reserves existing bridges, roads, railroads, etc., and all improvements theretofore erected on the property, and rights of egress and ingress for various purposes; taxes and all governmental assessments to be paid by Lessee. The habendum clause reads:

"TO HAVE AND TO HOLD, free of rent other than the aforesaid paid up rent, such of the demised premises as are owned by the Lessor, in fee simple and also such of the demised premises in and to which the estate of the Lessor is held as Lessee of others over periods

having more than seventeen and a half ($17\frac{1}{2}$) years yet to run, for and during the term of seventeen and a half ($17\frac{1}{2}$) years from the 1st day of January, 1923, to the 30th day of June, 1940, both days inclusive, and such of the demised premises in and to which the estate of the Lessor is held as Lessee of others over periods having less than seventeen and a half ($17\frac{1}{2}$) years yet to run, for and during the unexpired terms of said periods respectively and for and during the terms of any renewals or extensions of the respective leases thereof up to and including June 30, 1940."

Then follow the Lessee's covenants including the following: . .

"11. That it will, in so far as applicable to the land hereby demised, in all respects keep, observe and perform all the terms, covenants, conditions, stipulations and agreements on the part of the tenant to be kept, observed and performed (except as to the payment of rent reserved thereby which shall be paid by the Lessor) as set out and contained in the following leases, to-wit: (a) George Galbraith to J. B. Atherton, made September 7, 1900, recorded in Book 211, page 227, Hawaiian Registry of Deeds; (b) Carlos A. Long et al. to Waialua Agricultural Company, Limited, made March 17, 1905, recorded in Book 263, page 365, said Registry. * * *"

Then follows a mutual covenant.

"IT IS HEREBY MUTUALLY COVENANTED AND AGREED (a) that from time to time and as often as the estate hereby created in the Lessee in the lands in or to which the estate of the Lessor herein is that of Lessee, shall cease by limitation of time or because of the intervention of a paramount title holder and/or for any other reason said lands pass out of the control of the Lessor prior to the expiration of this lease, or as the estate hereby created in the Lessee in any other lands demised by this lease shall cease because of the intervention of a paramount title holder and/or for any other reason said lands shall pass out of the control of the Lessor, except, as herein provided, the Lessor will so often as the same shall happen forthwith as to each and every acre of pineapple land so lost secure to and place the Lessee in the possession of equal acres of pineapple land for the remainder of the term of this lease, provided it then has them, and if it cannot then so provide them, then the Lessee may upon the expiration of the term of seventeen and a half ($17\frac{1}{2}$) years hereby created continue in the possession of similar land rent free and under the terms and provisions of this lease, to be carved out of the other land covered by this lease as mutually agreed upon, for a further term, the area so to be occupied and the term of such occupa-

tion to be determined by computing in each case the number of years and/or fractional part of a year lost and multiplying such by the area lost in that particular instance; * * *

Then follow examples for computing the "acre year basis."

The lease contains cancellation clauses and is binding on and inures to the benefit of the Lessor, its successors and assigns, and the Lessee, its successors and permitted assigns. It is provided in the lease that the Lessee shall pay, when due, all taxes, including taxes for 1923, future assessments, rates, charges, and other outgoings of every nature and kind whatsoever, excepting such as are payable by other tenants of the Lessor, which shall during the term of the lease be charged, assessed, imposed, or grow due and payable upon or account of the demised premises or any part thereof, and upon the improvements and buildings both on and hereafter erected upon the lands and the crops growing thereon by virtue of or under any present or future law or requirement of any Governmental authority and which the Lessor shall or might be required to pay or discharge under any obligation to any Government or to any lessor of land leased to the Lessor and subleased hereby. The lease is not recorded, and is in evidence as Exhibit Ac-B-1.

It was stipulated that the following parties, who otherwise might have been witnesses, were unable to testify, either through death or otherwise:

Death:

Albert Christian

Clarence W. Ashford

W. A. Bowen

Arthur K. Brown

May K. Brown

Father Clement

John F. Colburn

N. Fernandez

Judge Gear

W. A. Greenwell—(Testified at first hearings, but died October 29, 1931.)

W. W. Goodale—(Testified at first hearings, but died April 4, 1929.)

Hanakaulani Holt

Mother Judith

Sister Marcelline

George Sea

Robert Steele

Richard Westacott, American Vice-Consul
at London

David L. Withington

Old age or illness:

Sister Albertina

William R. Castle

Sister Beatrice of the Priory

Absent from jurisdiction:

Judge Frank Andrade

The foregoing facts, stipulations and exhibits, in full or condensed form, are incorporated in this record and statement of evidence and made a part

hereof just as if specifically set forth in the further narrative and condensed statement of the evidence.

Where the term "Respondent" is used herein, it refers to the Respondent Waialua Agricultural Company, Limited, unless otherwise specifically pointed out.

NARRATIVE STATEMENT OF FURTHER EVIDENCE

On January 31, 1929, this cause came on for hearing in Honolulu before the Circuit Court for the First Judicial Circuit, Territory of Hawaii, Judge Cristy presiding. Petitioner was represented by Barry S. Ulrich and Charles M. Hite, of the firm of Ulrich & Hite of Honolulu; Respondent Waialua Agricultural Company, Limited, by Alfred L. Castle and Arthur Withington, of the firm of Robertson & Castle of Honolulu, and George S. Leisure, of New York City, and Respondent James L. Holt by John R. Desha, of Honolulu.

Thereupon, both sides announcing that they were ready, the trial proceeded as follows:

The opening statement was made by Mr. Ulrich, on behalf of Petitioner. Respondent reserved its statement until the opening of its case.

JOHN R. GALT

was called as a witness for Petitioner, was sworn, and testified as follows:

Direct Examination.

I am president and manager of the Hawaiian Trust Company and have been its manager for about twenty-four years. I have likewise been a director of the Waialua Agricultural Company for some five years. I do not have an independent recollection of the transaction whereby the deed dated August 5, 1905 Ex. A-12) for a recited consideration of \$6,000 conveyed to me the interest of Annie Holt Kentwell in the estate of Robert William Holt covering lands at Waialua, but upon being shown the deed I recognize that such a transaction took place, and I do know that I held such property solely as trustee for the Waialua Agricultural Company and subject to its order. I do not have an independent recollection of the transaction whereby the deed dated August 4, 1905 Ex. A-11) for a recited consideration of \$6,000 conveyed to me the interest of George H. Holt in the estate of Robert William Holt covering lands at Waialua, but upon being shown the deed I recognize that such a transaction took place, and I do know that I held such property solely as trustee for the Waialua Agricultural Company and subject to its order. I do not have an independent recollection of the transaction whereby the deed dated May 19, 1906 (Ex. A-13) for a recited consideration of \$6,300 conveyed to me the interest of Helen A. Holt individually and as guardian of

(Testimony of John R. Galt.)

minors in the estate of Robert William Holt covering lands at Waialua, but upon being shown the deed I recognize that such a transaction took place, and I do know that I held such property solely as trustee for the Waialua Agricultural Company and subject to its order. I know that I held these lands in trust for Waialua Agricultural Company, but I do not know of any written document which defined the terms of my trust, and know that I dealt with the properties exactly as directed by the Waialua Agricultural Company.

I was one of the trustees, but not a shareholder, of the so-called Helemano Land Trust, and, together with A. L. Castle, T. H. Petrie, R. A. Cooke, and R. B. Anderson, also signing as trustees, I executed the declaration of trust dated May 17, 1920 (Ex. A-1). This trust acquired the interests in the Holt lands at Waialua previously conveyed May 28, 1910 to William R. Castle, Trustee, by deed of James L. Holt and John F. Colburn Trustee (Ex. A-22). I knew this property was being held for the ultimate benefit of Waialua Agricultural Company. That was the thought with which I acted as trustee in the matter. The trustees under the trust were required to dispose of the land under the directions of the stockholders of the trust.

I know of no agreement, oral or written, entered into by the shareholders of the Helemano Trust with Waialua placing any terms whatever on the manner in which they should hold or continue to hold their interest in that trust, and, on the contrary, we advised one or two purchasers that we had their

(Testimony of John R. Galt.)

interests to do with, under the terms of the trust, whatever we saw fit, and it would be passed on to their heirs.

Waialua had outstanding bond issues from 1901 to 1916, and the Hawaiian Trust Company was the trustee under the mortgage deed of trust. During that time a great many business transactions were had between the Trust Company and Waialua, and in many instances where the Trust Company couldn't act, I acted individually. I do not have specific recollections of various conveyances of lands at Waialua, but I do recollect, in general, the fact that there were such conveyances. Where I purchased as trustee for Waialua, such money was furnished by Waialua and the amount charged against me as trustee. I remember a letter from John F. Colburn to me, relating to the Holt Estate lands at Waialua.

(Said letter was thereupon received in evidence, without objection, as Petitioner's Exhibit B-1, and is in words as follows:

Letterhead of
Kapiolani Estate Ltd.

Honolulu, T. H.
Aug. 23 1905.
Reed Aug 23 1905

Mr. J. R. Galt
City

Dear Sir:

Although my petition is ready to file in Court asking for the sale of the Waialua lands in ac-

(Testimony of John R. Galt.)

cordance with my conversation with E. D. Tenney, it is inexpedient however to do so until I have your offer in writing in the hands of C. A. Long, the administrator. Therefore I again remind you of the matter.

Yours truly

JOHN F. COLBURN.)

(The witness also identified a copy of his reply to Mr. Colburn, which was thereupon received in evidence, without objection, as Petitioner's Exhibit B-2, and is in words as follows:

Aug. 23 1905

Carlos A. Long, Esq

Administrator of the Estate of R. W. Holt
Honolulu, T. H.

Dear Sir:

I will pay One hundred and eight thousand dollars (\$108,000) cash upon the execution and delivery of deed upon the fulfillment of the conditions, below set forth for an undivided eighteen twenty-sevenths ($18/27$) interest in fee simple in the lands of the Estate of R. W. Holt whether devised by him at the time of his death or acquired by W. A. Aldrich, Executor, by purchase or otherwise, in the partition suit of Aldrich v. Robinson in the Supreme Court of the Kingdom of Hawaii, and particularly the following described lands situated in the District of Waialua, Island of Oahu, Territory of Hawaii, namely:

(Testimony of John R. Galt.)

1. Royal Patent (Grant) 235 and Royal Patent (Grant) 238;

2. All and singular those twelve (12) pieces or parcels (be the number more or less) of Apana 34 of Royal Patent (Grant) 4475, Land Commission A vard 7713, of the Ahupuaa of Paalaa;

3. Royal Patent (Grant) 431 of the Kaheeka Tract;

4. Royal Patent (Grant) 973 known as the lands of the Wahiawa;

The conditions upon which I will purchase are as follows:

First: The title to the above lands and your right to convey a fee simple title to an eighteen twenty-sevenths ($18/27$) interest therein free from all encumbrances excepting a lease to the Waialua Agricultural Company, Limited, to be satisfactory to my attorneys Castle & Withington.

The deeds to be warranty deeds made at your expense and to be satisfactory to my said attorneys and to be made to such person, persons or corporations and in such proportion as I may direct, it being my intention that such deeds when made, at my option, may be made of several portions or of undivided interest, to myself, or to such persons or corporations as I may direct.

This offer to hold good for sixty (60) days from this date unless sooner withdrawn by me.

Yours truly

J. R. Galt)

(Testimony of John R. Galt.)

WITNESS RESUMES: I was not familiar with the subject matter itself of the transaction we were engaging in. I made no investigation. I simply knew that Waialua wanted to acquire the land.

In connection with the interests of Annie Holt Kentwell, George H. Holt, and Helene A. Holt in the R. W. Holt Estate conveyed to me as Trustee (being Exhibits A-12, A-11 and A-13), I conveyed such interests to various subsidiary land holding companies at the instigation of the Waialua Agricultural Company. There was issued to me stock in these subsidiary companies which I later transferred direct to the Waialua Agricultural Company.

In connection with the shareholders of the Helemano Trust, Mr. A. L. Castle was attorney for the Waialua Agricultural Company, Mr. Petrie was an officer and director of Waialua, Mr. R. A. Cooke was one of the stockholders in the C. M. Cooke, Limited, and they were one of the heaviest holders in Waialua, and Mr. R. B. Anderson came into the picture largely through his connection with the Hawaiian Trust Company as attorney for said Company.

(Following the testimony of J. R. Galt, there was received in evidence, without objection, as Petitioner's Exhibit A-34, a statement giving a summary of the pineapple leases made by Waialua as Lessor on the lands of the Holt Estate at Waialua,

and in existence as of May 2, 1910, such statement showing:

1. Three leases in 1907 of a total area of 208.94 acres at a total annual rental net above taxes of \$2039.40;

2. Four leases in 1908 of a total area of 338 acres at a total annual rental net above taxes of \$3195;

3. Eighteen leases in 1909 of a total area of 2025.40 acres at a total annual rental net above taxes of \$17,104.80;

4. No leases from November 1, 1909 to May 2, 1910;

5. Average length of leases, approximately ten years;

6. Total rentals due annually from Holt pineapple lands at time of execution of deed of May 2, 1910, \$22,339.20.)

(The following then transpired: Counsel for Petitioner then requested of counsel for Waialua the Declaration of Trust of W. R. Castle referred to in Exhibit A-32, to which Waialua counsel replied that they would produce it.

“Mr. Ulrich: The declaration of trust executed by W. R. Castle upon the acquisition of these properties.

Mr. Castle: It is not here now.

The Court: We will reserve A-33 for it.”)

W. W. GOODALE

was called as a witness for Petitioner, was sworn, and testified as follows:

Direct Examination.

I am a stockholder in Waialua and was manager of Waialua Agricultural Company from November 17, 1898, until February 23, 1924. I was not a director.

(Witness thereupon identified a map of the so-called Holt lands cited in the petition in this case, and which was introduced in evidence, without objection, as Petitioner's Exhibit C; the areas designated as Grants 431, 235 and 238 are also portions of the Holt land but are set forth on an enlarged scale. This map is an original exhibit, a part of this record by order of the Supreme Court of Hawaii, a reduced reproduction being incorporated herein at the end of this volume.)

WITNESS RESUMES: Referring to the map, the portion colored in yellow was under cultivation for cane on May 2, 1910, being those lands makai (Hawaiian word for "towards the sea") of the Wahiawa Ditch at an elevation of approximately 700 feet, the Wahiawa Ditch being here indicated on the map as the Wahiawa Extension Ditch. On May 2, 1910, there were approximately 1618.48 acres of the land indicated on the map in cane, including 33 acres of cane land abandoned when the crop of 1910 was harvested. These 33 acres were experimental lots above the Wahiawa Extension Ditch to find out whether sugar cane would grow

(Testimony of W. W. Goodale.)

without irrigation, and after taking off the 1910 crop they were not used again. The total area, therefore, after 1910, was 1585.48 acres of cane land which were cropped according to Hawaiian methods of cultivation.

On the 1st day of April, 1905, that was practically a waste, covered—the greater part of it—with a dense growth of lantana and klu and guava. The Waialua Agricultural Company, Limited went into possession of that land under its lease on the 1st day of April, 1905, and I began work to clear that land and prepare it for cultivation the 1st day of April, 1905, and began clearing from that point, (indicating), and from that time on until the crop of 1910 was planted, and cleared and cultivated that land, proceeding systematically without any break.

As manager of the Waialua Agricultural Company I attended to the making of any pineapple leases. On May 2, 1910, Waialua had leased to various pineapple companies and pineapple growers for the cultivation of pineapples a total area of Holt lands of 2572.34 acres, from which leases the said Waialua Company was entitled to receive an annual rental of \$22,339.20, net above taxes. That would represent the net income to Waialua from those lands. That acreage was actually under lease, though I don't know that it was actually under cultivation. The 1905 lease, for the entire Holt area, carried a total rental of \$9,000, of which Waialua paid its proportionate share.

(Testimony of W. W. Goodale.)

I was a director of the Wahiawa Water Company, and in 1910 some of the water from the Wahiawa Reservoir, when it reached a certain level, flooded back onto the lower portion of Grant 973, which I am marking as A to B on the map, Exhibit C, and when it passed a certain point then it came onto the lands of Grant 1092, the Owen J. Holt Estate property. In 1910 we had the right to flood these lands, due to our purchase of a lease of R. William Holt, son of Owen J. Holt, who happened to have a lease on this particular part, which later expired. Waialua Agricultural Company was the principal stockholder in the Wahiawa Water Company.

In 1908 and 1909 Waialua constructed the Helemano Ditch, including the Helemano Branch, so designated on the map, on the Holt lands down to the lower lands, and in 1910 Waialua constructed the Poamoho Branch of the Upper Helemano Ditch, being likewise designated on the map, Exhibit C. Such ditches are separate from the Wahiawa water system. In my report of February 13, 1911, I stated as follows:

"This ditch, now combined with the new Poamoho ditch, has given us 3,433,102,000 gallons of water for use on Helemano and the upper Kawailoa land. A reservoir should be built to store the night and flood waters of these ditches. Surveys of available sites, estimates of costs of construction have been made; dams that will impound several hundred million gallons can be built at moderate cost."

(Testimony of W. W. Goodale.)

The figure of 3,433,000,000 odd gallons of water I think was intended to cover the total amount of water that had been delivered since the ditch was constructed and not the year. I have no way of giving you an idea of the annual or daily water production. It varies greatly from nothing at all to a large flow. We found our weir measurements were very greatly in excess of the actual flow. They were taken and figured on the maximum and not on the fluctuating flow, so that after that we had to make very material corrections in our weir measurements. These waters were not impounded on the lands, but were taken in ditches as they run. I said it would have been possible to impound several hundred million gallons but we had only made one dam for that purpose which was built in a dry ravine. By "impounding" I mean "to make available."

The Opaeula Ditch is entirely on the lands of the Bishop Estate, and no part of the water collected by the Opaeula Ditch drains from the Holt lands. The Wahiawa Ditch extension which follows the upper part of the cane area, shaded in yellow on the map, was for the purpose of carrying water from the Wahiawa Water Company reservoir across the lands of Heleman (Holt lands) over to the Bishop Estate lands which were under lease to the Waialua Company; that is to say, it was the Waialua Company's ditch used for the purpose of carrying waters across the Holt lands to other lands under cultivation by it to the north. The Wahiawa Extension Ditch belonged to the Waialua Agricultural Com-

(Testimony of W. W. Goodale.)

pany and was constructed in 1906. It likewise delivered water coming from the Wahiawa Reservoir to a reservoir on the Holt lands for the purpose of storage of night water, and no part of the water collected for such storage purposes was water collected from the Holt lands until after 1910 when other ditches were constructed. The Helemano Ditch was eventually continued to connect with the reservoir. The water in the Poamoho Stream, marked on the map, comes from the watershed above the Holt lands. Except for the water of the Poamoho Stream which is taken by the Poamoho Branch, the balance is not utilized by Waialua.

The average yield per acre of the sugar crop of 1910 for the entire Waialua Plantation was 6.10 tons; for 1909 6.32; and 1908 6.28. The Holt lands compared fairly closely with the Bishop Estate lands and other lands of the Plantation of similar elevation. I tried to experiment of growing sugar cane on the lands above the Wahiawa Extension Ditch and not subject to irrigation, and it was an absolute failure. It was not entirely a question of irrigation, but the weather on those upper lands is so cold that they are not adapted for sugar. The limit of elevation for lands suitable for the cultivation of sugar would be, on the Holt property, about 700 feet.

(At this point, Petitioner's Exhibits F-1 to F-5, inclusive, were received in evidence, over Respondent's objection, the same being certain statements showing areas harvested, the tons of sugar produced,

(Testimony of W. W. Goodale.)

and the average tons of sugar per acre, on the Holt Estate lands for the crops of 1908 to 1912, inclusive, briefly as follows:

Exhibit F-1: Crop 1908, area 946 acres, production 6038.76 tons, average 6.38;

Exhibit F-2: Crop 1909, area 559.66 acres, production 3847.19 tons, average 6.87;

Exhibit F-3: Crop 1910, area 1023.75 acres, production 7441.62 tons, average 7.26;

Exhibit F-4: Crop 1911, area 594.73 acres, production 3763.80 tons, average 6.32;

Exhibit F-5: Crop 1912, area 817.45 acres, production 5538.99 tons, average 6.77.

Petitioner's Exhibit F-6 was likewise received in evidence, over like objection, the same being a statement showing the cost to Waialua Agricultural Company of clearing the Holt lands from April 1, 1905; to May 2, 1910, of \$43,350.59.

Petitioner's Exhibit F-7 was also received in evidence, over like objection, the same being a statement of the moneys expended by Waialua in making improvements on the Holt lands as follows:

(Testimony of W. W. Goodale.)

STATEMENT SHOWING COST OF IMPROVEMENTS ON
HOLT LANDS TO MAY 2, 1910.

Date	Description	Original Cost
1906	Helemano 3 Reservoir.....	(2,299.70
1908	“ 6 “.....	(9,396.05
1905	Helemano Lower Ditch.....	7,022.70
1907	Helemano Upper Ditch.....	22,708.35
1906	Wahiawa Extension Ditch $\frac{1}{3}$	4,791.54
1909-10	Poamoho Branch—Helemano Ditch.....	6,563.40
1906	Helemano 54" Siphon.....	16,098.49
1906	Opaaula 54" Siphon $\frac{1}{2}$	4,869.97
	Waterways.....	5,875.10
	Flumes.....	299.35
	Roads, Bridges and Fences.....	3,532.35
	Development Upper Lands.....	2,192.95
	Telephone Lines.....	719.60
	Railroads.....	30,922.52
	Buildings (including Domestic Water Sys.).....	19,051.08
	TOTAL	\$136,843.15

(Counsel for Petitioner asked to prove the value of the Holt cane lands by showing the net profit which Waialua Agricultural Company realized from said lands after allocating to said lands charges for plant, labor and all other items of expense. The Court ruled that unless Petitioner could show that the Holt cane lands were unique in character, and different in character from other cane lands, such method was improper for showing value; that a method of showing value which involved the question as to whether Waialua Agricultural Company itself, or through its organization, was getting all it could out of the particular lands, was improper.

(Testimony of W. W. Goodale.)

Counsel for Petitioner thereupon stated that he would prepare an offer of proof and present it in formal order.

Thereafter on further discussion between the Court and respective counsel, the Court sustained objections to a question on the cost of production per ton of sugar on the Holt lands; to a question as to what proportion of the total revenue derived from the sale of sugar on such lands would be represented by the cost of producing that revenue; and to the foregoing question, to assume a company with a reasonably efficient business management.

The Court further ruled that it would have to be shown that witness was an expert on the average expense of a normal raising of sugar cane, and that a foundation would have to be laid as to whether the Holt lands were average cane lands for the Territory.

WITNESS RESUMES: I have been manager of Waialua for twenty-five years. In my work as such I have not had occasion from time to time to confer with persons interested in other plantations as to the costs and expenses incurred by them and the comparing of results. I think those figures would not become public knowledge or subject to inspection. I am fairly familiar with cost of production on Waialua, but not what our cost of production bears to the cost of production in other plantations. I see the published figures in the annual reports of plantations, but I do not know

(Testimony of W. W. Goodale.)

that any of those plantations state their cost of production in such reports. I was manager of Onomea for thirteen years and familiar with the cost of production there while I was there. I have made no general study of costs of production, except as relates to Waialua and at Onomea while I was there. I could not testify what a reasonably efficient business management should require, in the way of general costs of production.

The Waialua Plantation is divided into very many sections. No two of them are alike as to conditions and they are not the same in any two sections of that plantation. The sugar lands indicated on the map were lands between other lands of Waialua likewise in sugar. Waialua itself, having bought sugar lands, did not resell them. There was no other sugar company purchasing sugar lands in Waialua in 1910, but there were private buyers of such lands in the market, such as landed proprietors, buying either for sale or lease. I do not know of any sale, in Waialua or elsewhere, that has been made of improved sugar lands as between plantations.

The only existing railroad line from the mill to the farthest point of cane under cultivation was about eight miles. It would be about two miles from the mill to the Holt lands, but the only way to get at those lands would be to go around through the gulches indicated on the map. The Wahiawa Ditch Extension is at an elevation of about 700 feet. The

(Testimony of W. W. Goodale.)

pineapple area would begin at a point of about 1,000 feet, and the average elevation at around 1400. (The elevations 350, 700, 1000, 1400 and 1616—the highest point on the Holt property on a sort of ridge—are marked on the map, Exhibit C.) There are some very deep ravines in the cane area, cutting the cane lands into sections; for instance, the one marked "Heleman Stream" is a very deep ravine, the contour line somewhat indicating its depth. The cultivated lands are only up to the edges of the ravines and never down into the same. The cane lands are situated in a dry belt, the average being possibly 35 or 40 inches rainfall per annum, including the heavy storms. It is not well distributed. The elevation of the Holt lands at the lowest tip, as indicated on the map, is about 20 feet. Waialua had sugar cane lands completely surrounding the Holt lands except at the upper area where sugar ceased to grow.

The water on the Holt lands came down through the Heleman Gulch, rising on the lands above the Holt lands, namely, the lands owned by the Bishop Estate. There is artesian water in some places in the Holt lands, and in 1916 in one place I put in three wells. Correcting my testimony heretofore given, I would like to state that whereas the first substantial harvest of sugar on the Holt lands was in 1908, in 1907 Waialua harvested 45 acres at the lower end of the Holt lands that I planted in 1905 and irrigated from a ditch which we later aban-

(Testimony of W. W. Goodale.)

doned, namely, the Lower Helemano Ditch. That particular ditch was never used after 1907. In my report as manager for the year ending December 31, 1911, under the title "Helemano Ditch", I reported as follows: "The Helemano and Poamoho ditches, the combined flow being required by one weir has delivered 3,827,865,384 gallons during the year." That was intended to report an annual flow and although I am not quite sure of the weir measurements that is what I thought it was at the time.

The Holt lands lie upon the slopes of the Koolau Range, which is the backbone of that section of the island, and the Koolau being an elevation, back of the Holt lands, of about 2500 feet. (Witness indicates on the map, roughly, the 1000-foot elevation on the Holt lands.)

In 1910 we had a lease with the Bishop Estate under which we paid a minimum rental of \$13,500 a year, plus $2\frac{1}{2}\%$ of the sugar produced from the land. This lease covered between 18,000 and 20,000 acres, of which perhaps 3500 acres were cane land; it also leased a right to the waters of the lands of Kawaihoa and the lands above the Holt lands. I would estimate that of this minimum rental of \$13,500 about \$10,000 should be considered as rental for the forest lands, that is the right to take the waters from those lands. About 40% of the waters went down to Helemano and about 60% to the Kawaihoa lands, which were not Holt lands.

(Testimony of W. W. Goodale.)

Cross Examination.

In my direct examination I referred to a \$13,500 minimum rental plus $2\frac{1}{2}\%$. I did not mean by that that the rental was \$13,500 to which we would add $2\frac{1}{2}\%$ of the products of the land. As an example, assume the \$13,500 as the minimum rental. If $2\frac{1}{2}\%$ of the returns of the land amounted to \$17,500 we paid the Bishop Estate \$4,000 additional, according to the terms of the lease.

(Counsel for Respondent offered, and there were received, as Respondent's Exhibits 1-A, 1-B, 1-C and 1-D, for identification, the following typewritten copies of purported letters:

1-A: Letter, Dec. 7, 1909, addressed to ~~James~~ L. Holt and signed "Eliza Holt Christian."

1-B: Letter, Dec. 7, 1909, addressed to "Dear Cousin Jimmie" and signed "Eliza."

1-C: Letter, January 29, 1910, addressed to "Dear Jimmie" and signed "Eliza."

1-D: Letter, March 11, 1910, addressed to "Dear Jimmie" and signed "Eliza."

HORACE N. CRABBE.

was called as a witness for Petitioner, was sworn, and testified as follows:

Direct Examination.

I am 66 years of age. I work for the Territorial Government in charge of its powder magazine on

(Testimony of Horace N. Crabbe.)

Sand Island; I was born in Hawaii, and knew Eliza and her father first at Makaha and later in Honolulu. I also knew Eliza's mother. I first became acquainted with Eliza when she was four or five years of age. Later, when she was seven or eight, I knew her in Honolulu when she began to go to school. She always played with children smaller than herself—kind of an idiot way she was. When I would endeavor to talk to her she would stutter and walk away, although sometimes she would come to me. I would question her upon her return from school as to her alphabet, in answer to which she would begin, "a, b," and would then go off into numbers, "one, two," etc. She could not say her alphabet nor could she count. She could not count to ten. I endeavored to get her many times to say her alphabet, but she could not. This at a time when she was ten or eleven years of age. I never could carry on a rational conversation with her, and could get nothing intelligent out of her. She would walk away from me as I would talk to her. When she was living at Makaha as a small girl I visited the family home three or four times, and on these occasions stayed there sometimes a week, sometimes two weeks. I lost sight of Eliza when she began living with the Kentwells. Her condition, however, as I observed it from the time I first saw her until she went away with the Kentwells, remained the same. When I last saw her she must have been about thirteen because she had gone to school at the Priory with my own daughter. Her condition was one of stupidity—com-

(Testimony of Horace N. Crabbe.)

pared with the statue worshipper the latter was brighter than she.

Cross Examination.

I am not related to any of the Holt family. When I visited at Makaha, Eliza's father and mother and a couple of Hawaiians were there. I could see that Eliza was not all right from the very first occasion that I saw her; that she acted silly. I knew other children, my own included, who were much brighter than Eliza. She could not answer intelligent questions and her actions showed that she was a kind of an idiot, though I cannot remember what those actions were. I told her father that she wasn't right. No suggestions were made to me that Eliza did not know her alphabet. She never improved in her condition. She would not play with large girls but always played with tiny ones—this when she was between seven and eight. It was after she was eight, and before eleven, that she was at the Priory. When she was eleven or twelve she could not say her alphabet and confused the same with numbers. She was an idiot and was not permitted to come by herself when she was a large girl.

MRS. MARIE AYLETT

was called as a witness for Petitioner, was sworn, and testified as follows:

Direct Examination.

I am a matron at the police station and have been such since 1910. In 1890 I was a teacher and the principal of the Kalihi Valley School for five years. I first knew Eliza in 1886 as a baby in arms, and from the first time I knew her she did not have that normal appearance like other normal children. She was always funny, very silly. She was a feeble-minded child—not normal. When Eliza was about three or four years of age I tried to teach her just a few objects, such as “chair,” “table,” and I would make a statement for them to repeat. The others would do it but she can’t. She would laugh and go out and spin around. She never played with toys or dolls or marbles.

Cross Examination.

A cousin of mine was married to a member of the Holt family, a brother of Mrs. Kentwell. On one occasion I stayed with the Holts for about three weeks and then they had brought Eliza to my home when Eliza was a tiny baby. I then saw Eliza quite often, and from the beginning she was the funniest baby amongst all our babies. She (Eliza) was called “silly baby” while she was a baby in arms. I had always been a teacher to my brother’s children and remember definitely attempting to teach Eliza but do not remember when this first started. I would

(Testimony of Mrs. Marie J. Aylett.)

say something but Eliza wouldn't answer. I asked her questions that she did not understand, just what I can't remember, but once in a while I would say something and she wouldn't answer, just run away like the rest of the children. My description of Eliza as a feeble-minded person is based upon my own observations of Eliza's actions.

Re-direct Examination.

I knew Eliza up to the time she was seventeen or eighteen years of age, and I never heard her carry on a real, sensible, rational conversation. She may have before, but not when I was present.

Re-cross Examination.

Eliza would obey a command if someone told her to do something.

DAVID M. KUPIHEA

was called as a witness for Petitioner, was sworn, and testified as follows:

Direct Examination.

I was a member of the legislature of the Territory of Hawaii and have had musical experience, having been a teacher of the steel guitar many years ago. I am 56 years of age, and knew Albert Christian and Eliza Holt before they were married. She looked lolo and while my friends called her lolo, I knew

(Testimony of David M. Kupihea.)

she was ihepa; "ihepa" translated into English means feeble-minded or something. She seemed kind of interested in music. I tried to teach her to play the guitar but she could never learn to play a tune and she could never understand because I knew very well she was ihepa. The Kentwells always tried to safeguard her from being taken away by someone else, but many times the Kentwells had come to my place looking for her. Albert Christian often stayed at my home. He was a drinker. I do not remember ever hearing Eliza carry on a rational, sensible conversation with anyone. Her laughter was the laughter of a child.

Cross-Examination

My acquaintance with Eliza began in 1898 when she was about fourteen years of age. My efforts to teach her music were on occasions when she and Christian came to my house. She was ihepa not only because her eyes were crossed, but she did not understand what you were talking about. I talked Hawaiian to her and sometimes a little English. Either language made no difference to her. Her father talked to her sometimes in English, sometimes in Hawaiian. I spoke to her in both languages, sometimes broken English, sometimes broken Hawaiian, just to get her to understand. She hummed, but could not sing words, nor could she dance the hula, nor keep time to music,—this when she was sixteen or seventeen years of age.

MRS. HARRY ALLEN

was called as a witness for Petitioner, was sworn, and testified as follows:

Direct Examination.

I was the wife of Chris J. Holt, one of the sons of Owen J. Holt, Sr.; I have known Eliza and her father very well since about 1897, at which time Eliza was about ten years of age. I knew Eliza also when she had her first child while living at the Seas, to which place I frequently went. From the time I first knew the girl she was simple-minded, an idiot, one who had the mind of a three or four-year-old child. She (Eliza) was unable to care for her baby, paid no attention to it, and the baby was taken from her by the Seas because she was not able to look after it. I never saw Eliza with any reading matter, and never saw her write or handle anything in writing; I never saw her sew. She had to be reminded to take a bath. She did not know how to take care of herself. The only money I ever saw given her was ten cents or a quarter. She never tried to nurse her baby although she was in good health. After her child was born, most of the time Eliza would be out of the house playing about the place, at which time she associated with little children in preference to adults. I remember Eliza as a mother playing with tiny children.

Cross-Examination.

I have talked with many people who all knew that Eliza was simple-minded. My testimony as to Eliza's inability to care for her child is based on what I had observed. I guess Eliza could dress herself.

ABBIE ZABEAN

was called as a witness for the Petitioner, was sworn, and testified as follows:

Direct Examination.

I knew Eliza at Makaha when I was living at that place with Mrs. Cushingham. I spent my vacations there when Eliza was either five or six years old, at which place I saw her mostly. The Cushingham house was in sight of the Holt house where Eliza lived; the inmates of the homes visited each other and I saw Eliza there on several vacations. Eliza's condition was simple; when one spoke to her she wouldn't talk and nothing could be got from her,—I know this from my own experience and observation. I did not know whether Eliza could read or not, but had heard that Eliza had been at the Priory. It was my impression when I knew Eliza that she had been at school. I do not remember having seen her read or write. When spoken to she would not talk, nor would she play when asked to; but would act silly; sometimes, however, she would play with the dog.

Cross-Examination.

I was born in 1875. When Eliza played she would play alone; she was very simple like,—ihepa;—grinned and ran around without a word; looked ihepa; would grin with a sort of slanting tilt to her head. I never heard her talk. She was not bashful. I do not remember the length of time I knew Eliza. By "ihepa" I mean simple-minded.

HELEN McPHERSON

was called as a witness for Petitioner, was sworn, and testified as follows:

Direct Examination.

I have been a school teacher in the Honolulu schools for fifteen years. I knew Eliza at the Priory when I attended that school. Eliza was about five years older than I, and was then about sixteen or eighteen. I was there with her for a period of less than a year. Ever since I knew Eliza, the latter was very silly. She was spoken of as "lolo," which nowadays would be called "simple-minded"; was always that way, and was never any different. I was not in the same class with Eliza, being ahead of her,—this at a time when I was twelve or thirteen years of age. I observed Eliza about the playground, but not in class. When Eliza was spoken to by the girls at school she looked silly and foolish. Later, when I saw her at the Kentwells, her condition was the same. I saw her at the latter place once a month for two or three years.

I remember Eliza at the Priory at the time she was going to have a child, and remember that Eliza did not know her own condition, and speaking of it, she did not know what was the matter with her. What Eliza had to say was very simple and short. In speaking with her one would have to talk easy.

Cross-Examination.

During the play periods Eliza, when she was not standing off by herself, would play with the younger

(Testimony of Helen McPherson.)

girls. She was in the class with those younger girls. At the Kentwell's Eliza never helped with the dishes but sat around acting foolish and doing whatever she was told to do. The Kentwell children were never left alone with Eliza. John D. Holt looked foolish too, and acted the same way as Eliza.

ELIZA YATES MACKENZIE

was called, out of order, as a witness for Respondent, was sworn, and testified as follows: (this testimony was taken at her bedside in her home.)

Direct Examination.

I was born in Kohala on the Island of Hawaii. I knew Eliza Christian at Waikiki when she was living with Annie Kentwell. Annie Kentwell had at that time two children; one a baby and the other a child walking. I used to visit the Kentwells for a period of three weeks or sometimes four weeks.

I think Eliza Christian was perfectly sane. There was nothing wrong with the girl. She was nurse girl, the woman who cleaned the house, sewed the clothes, and I never saw anything out of the way with her. I used to sit on the veranda and talk with her nearly all morning sometimes, and she seemed to me perfectly rational. It was just general conversation. I do not know whether she could read but I know that she could sing Hawaiian songs. She had a little instrument and would strum on it on the

(Testimony of Eliza Yates Mackenzie.)

veranda and sing. I remember one song which is one of the older Hawaiian songs, namely, "Like no a Like." I don't recall seeing her with any magazines or newspapers. She would clean the house, cook, wash, iron and take care of the children. I saw her myself in the kitchen cooking and what she cooked was very good. She always ate in the kitchen with her father, old John Holt, and the rest of us used to sit in the dining room and eat. She would wait on the table. If the Kentwells were away the children would be left with Eliza. She used to go in swimming and would ask Mrs. Cassidy if she could go on the pier. I would go along and watch her. The Cassidy place was next to the Kentwells at Kalia Road at Waikiki.

Cross Examination.

My recollection of Eliza Christian is vivid. I can remember her singing songs but I could not rehearse any conversation. I have no recollection of her reading. I do remember the one particular song because she taught me three or four verses. I remember the Kentwells going away. I myself was living in Kohala and would come down to Honolulu. I saw them, as I remember, in 1904 and 1905. Annie was the one in Honolulu I saw particularly. She was a schoolmate of ours at the Priory. She was not in our grade but I remember Annie there. I don't want to tell you how old I am because you will say my brain is gone. I am seventy-two years of age. This

(Testimony of Eliza Yates Mackenzie.)

is going to be published in the paper and I don't want it published there. So far as Eliza Christian was concerned, I never thought there was anything out of the way with the girl; I would say she was only a drudge and kept a drudge by the Kentwells. They did not have any servants, only Eliza to assist. When Eliza wanted to go down town she would ask Annie Kentwell for money. She would make purchases for herself and the family, I suppose, though I never kept tab on her. She was a good sewer, making all her clothes and the clothes for the oldest little girl. She could crochet beautifully, such as lace for petticoats and different things such as underwear. She had a very sweet voice and could carry a tune well.

I did not know that Eliza had ever had a baby nor did I know that she was married. She was always called Eliza Holt. I know that Annie Kentwell wanted her to marry George Kentwell and she didn't do it. At one time Annie Kentwell took Eliza into her bedroom and whipped her with a rawhide because she refused to marry George. Eliza came to me and said, "Look here, Mrs. Mackenzie, I am going to run away," but Annie Kentwell watched her so closely she never had a chance.

My recollection is that I visited the Kentwells twice: one month in one year and in another year for two weeks. I did not tell counsel for Petitioner that Eliza Holt used to sit and read to me by the

(Testimony of Eliza Yates Mackenzie.)

hour, and if he says I did I will tell him he is a liar.

I am tired now and can't tell you any more. My doctor is Dr. Judd.

JAMES L. HOLT

was called as a witness for Petitioner, was sworn, and testified as follows:

Direct Examination.

I am the James L. Holt named as one of the respondents to this action. I am the son of James R. Holt and a first cousin of Eliza Christian. I am 57 years old. I first knew Eliza Christian at Makaha when I went there on a school vacation and she was about two years old. I saw her mostly here in town when she was seven or eight years old living with my aunt. John D. Holt and Eliza lived at my home for a few months during the period between 1897 and 1898. I knew Eliza when she went to the coast with Annie Kentwell in 1900, when she came back, and until she left here. I know of my own knowledge that she was an imbecile from infancy, from the womb. When you say to her, "How are you Eliza?" she merely giggled and would give no rational response to questions put to her. I never saw her read. I do not believe she could write intelligently. She played with younger children. I didn't notice any change up to the time she left.

(Testimony of James L. Holt.)

I first undertook the purchase of the Eliza Christian interest in the Holt lands in 1909, I think about the time of my letter to W. R. Castle (Ex. D-2) of September 27, 1909. My negotiations were mostly with W. R. Castle. (Witness here identified Exhibit D-5 as a copy of a letter he sent to L. K. Kentwell, and Exhibit D-6 and Exhibit D-8 as copies of letters he received from Kentwell.) I think I learned in Honolulu, before the receipt of letter Exhibit D-8, that Mr. McCandless was negotiating for the purchase of the Eliza Christian interest. This was discussed by me with Mr. Castle and Mr. Colburn.

The letters introduced in evidence and the cables which were sent to Kentwell were sent after a conference with Mr. Castle or Colburn. In the first place I was anxious to sell my own interest, and when I heard about the McCandless deal, trying to buy Eliza's interests, I went to Castle and told him the circumstances. As to what Mr. Castle said to me in this connection, after I laid the proposition before them he told me to go ahead and negotiate with the parties in England, Kentwell and Annie Kentwell. My communications were addressed to Lawrence K. Kentwell and he was the only one I dealt with. The various messages sent out from the office of Castle & Withington to Mr. Withington on the mainland I know went back and forth, but I had no connection with them and I did not personally send any messages to Mr. Withington. They were

(Testimony of James L. Holt.)

messages from Castle & Withington. Referring to the unsigned copy of a letter dated April 28, 1910 (Ex. D-26) to McCandless, I believe such a letter was sent after conference with Colburn and Castle at Castle's office.

(Witness was thereupon shown by counsel for Petitioner an unsigned draft of agreement dated April 15, 1910, between himself, John F. Colburn and William R. Castle, Trustee, regarding the sale of a two-thirds undivided interest in the Holt lands for \$120,000. The record shows, in connection therewith, that a subpoena duces tecum had been, prior to the trial of the cause, served upon Mr. W. R. Castle, calling upon him to produce all documents, cables, letters and the like in connection with the transaction, but that Mr. Castle was unable to appear because of physical disability. At a prior stage of the trial counsel for Petitioner made demand upon Respondent for the production of the original of such document. Counsel for Respondent at that time replied thereto that he had made search through the files for such document, but no such document could be found; that the only document Respondent had was a copy of a purported draft of such document recently handed to counsel for Respondent by counsel for Petitioner.)

WITNESS RESUMES: I got this document from the office of Castle & Withington.

(Testimony of James L. Holt.)

"The COURT: The court would like to ask a question. Do you mean this document which you are now being shown was executed?

A. After it was corrected. This was a draft.

The COURT: This particular paper was signed and executed or some other paper?

A. Some other paper. This is a draft.

The COURT: And this document you have been shown, as I gather, is supposed to be a draft of some ultimate document that was executed?

A. Yes, sir.

The COURT: This itself was not the final document?

A. No, sir, because of some corrections noted in this copy.

The COURT: I gather from what you say that there was a final writing growing out of this and other papers that was executed?

A. Yes.

The COURT: Did you get a copy?

A. I haven't got it now. I don't know whether I got it at the time or—

The COURT: Was there more than one copy signed?

A. I think three, one to Colburn and one to me and one to Mr. Castle.

The COURT: This paper was some preliminary phase of it?

A. Yes."

(Testimony of James L. Holt.)

WITNESS RESUMES: I remember signing such a document. Mr. Castle signed it and John F. Colburn signed the final document. The substance of the agreement we signed was that the Waialua Agricultural Company was to pay \$120,000 for a two-thirds interest in the Holt lands, and out of that payments were to be made to Eliza Christian and Kentwell and deducted, including Mr. Withington's trip to England. The money was to be supplied by Waialua. Colburn and I were to get the balance after the payments made to Mrs. Christian for her interest and the Kentwells for their interest. The agreement provided that I should undertake to proceed without delay to do everything I could to secure the Christian interest.

(Petitioner's Exhibit D-36 was received in evidence without objection, the same being a notification to Waialua and W. R. Castle, dated April 21, 1910, and signed by witness James L. Holt, that the agreement dated April 15, 1910 was signed by witness on condition that John F. Colburn would also sign, and is set forth in full in the foregoing D series of exhibits.)

WITNESS RESUMES: The copy I signed and Mr. Castle signed was identical, the same wording as here, with the exception of an additional correction in Mr. Castle's own handwriting and the last clause of which was struck out.

(Petitioner's Exhibit D-37, being such unsigned draft of April 15, 1910, was introduced and re-

(Testimony of James L. Holt.)

ceived in evidence over objection, and appears in full in the foregoing D series of exhibits.)

WITNESS RESUMES: I knew of Eliza's imbecile condition at the time of these negotiations. I don't remember whether it was discussed with Mr. Castle and Mr. Colburn. I knew that Annie Kentwell had been appointed as Eliza's guardian, but I didn't know for what, for her person or her property. I realized myself roughly \$60,000 out of this transaction, less the mortgage to Castle & Cooke.

I was tax assessor for the First Taxation Division in Hawaii from 1906 to 1908 and had been in the tax assessor's office from 1896. In the course of my duties I placed values on real estate on the island of Oahu. Returns for lands and tax assessments were made through my office. I believe the value of my interest sold in 1910 was \$250,000 to \$300,000. After I left the tax office in 1908 I was in business in the Office Supply Company with Charles Marques. I was indicted for embezzlement in 1910 by the Territorial jury. I had no money at the time, was having trouble with my trustee, and engaged attorneys to represent me in court. I got word from Mr. Seal of Kau to the effect that the deputy to whom I had entrusted this fund was a crook from Los Angeles and if I were to go to Los Angeles I could unearth his record. After this information was secured by me the whole thing was dropped, but Waialua having a long lease of the Holt lands

(Testimony of James L. Holt.)

and I having no money and being in need of funds, I sold out for that price.

(Witness was shown, by counsel for Petitioner, certain letters marked 1-A, 1-B, 1-C, and 1-D for identification by Respondent, the same being type-written copies of purported letters of Eliza Christian to James L. Holt, dated respectively December 7, 1909, December 7, 1909, January 29, 1910, and March 11, 1910.)

WITNESS RESUMES: I believe I received the letters of December 7, 1909. I wouldn't swear that she wrote the letter (Ex. 1-B for identification) herself. My answer would be the same as to the other two. I cannot identify Exhibits 1-A, 1-B, 1-C and 1-D as actual copies of any letters received by me. I paid no particular attention to letters of this kind. I knew of my own personal knowledge that Eliza was incapable of composing such a letter. I always turned over to Castle & Withington different letters or cablegrams I got in this transaction. Whether these letters were in longhand, or type-writing with only the signature in writing, I couldn't say, eighteen years ago; I couldn't say. About three weeks ago Mr. Chillingworth offered me \$500 to make some affidavits ~~that~~ they were correct copies, but I refused because I couldn't identify them as copies of the originals. I have never been able to find the originals of such letters.

At the time I signed the deed conveying the properties to Mr. Castle, Trustee, I had never seen

(Testimony of James L. Holt.)

the deed of May 2, 1910. I first learned of the contents of that deed in August or September 1910 after my return from Los Angeles, and so far as the actual deed itself—the original deed being Exhibit A-21—I have never seen it until the present moment. The agreement of April 15, 1910 (Ex. D-37) was signed the last part of April 1910, I think, and to the best of my recollection it was signed before May 2, 1910.

Cross Examination.

My first business transaction with W. R. Castle was in 1893 when I borrowed \$2500 on my interest in the Holt lands at Waialua. It was later that this amount was increased to \$12,500 in December 14, 1897 (Ex. 2-A). I had a brother who shared equally with me under my father's expectancy under the will of R. W. Holt. I purchased his interest on May 18, 1893, by written instrument (Ex. 2-B). I frequently sent my brother foodstuffs, clothing and money. I purchased the life interest of my father in the R. W. Holt estate under two written instruments dated March 16, 1901 (Exs. 2-C and 2-D). Under this latter agreement (Ex. 2-D) I was to receive 50% of the estate income, which went to my personal use. I was to give my father a house to live in and pay the taxes and water rates on the premises. I also purchased the life interest of my uncle John D. Holt on July 1, 1902 (Ex. A-17) and by agreement of the same

(Testimony of James L. Holt.)

date (Ex. 2-E) was obligated to pay him a minimum of \$25 per week for life. My understanding was that I was obliged to pay the same amount to Eliza Christian after the death of John Holt, until their heirship was proved in court. When I had procured these interests I entered into an agreement with John F. Colburn to assume these obligations under the trust deed of July 1, 1902 (Ex. A-18). Colburn then tried to sell the Holt lands at Waialua, I think going to court and claiming a fee simple title.

The sale of these Holt lands was especially contemplated by the Trust Agreement of July 1, 1902 (Ex. A-18). After Colburn was not able to sell the lands we modified the trust agreement referred to. This was after the court decision, and the trust agreement was modified by agreement of March 4, 1905 (Ex. 2-F). We were contemplating at that time leasing my portion and the portion acquired by Mr. Colburn under the deed of trust to Waialua. This was done on March 17, 1905 (Ex. A-8), right after the modification agreement of March 4, 1905.

I don't remember any efforts to sell the property covered by the deed of trust until 1909. I knew at the time (March 31, 1909, Ex. D-3) that Mr. Colburn offered to sell the property to Waialua.

At that time I was trying to acquire the Eliza Christian interest for myself, and I wrote a letter to Mr. Castle to that effect, trying to help raise

(Testimony of James L. Holt.)

some money. I tried to acquire her interest for myself from that time on until the final consummation of the deed to the Waialua Agricultural Company. My interest in acquiring the one-third belonging to my cousin Eliza Christian was the fact that I wanted control of it without somebody from the outside getting hold of it. Around the latter part of 1909 Mr. Castle told me he did not want to buy my one-third, but that he wanted to buy a two-thirds interest, as I remember.

I knew from my correspondence with Mr. Kentwell that as far back as 1908 they were trying to dispose of the Eliza Christian interest, always writing back here to see what they could get. I think I made a sort of tentative offer at that time of \$45,000. The offer fell through because it was predicated on getting the title straightened out in court.

In the early part of 1910, February I think, when I got definite news of McCandless negotiating for the purchase of the Christian interest, I believe I received an offer from Kentwell on the basis of \$30,000 for the Eliza Christian interest and \$5,000 additional as evidenced by letter of March 8, 1910 (Ex. D-6). Whatever was paid for the Eliza Christian interest came out of the total \$120,000 purchase price. In regard to the \$5,000, I think before the Kentwells went to England in 1906 Annie Kentwell secured a document from John D. Holt assigning his monthly allowance to Annie Kentwell, and

(Testimony of James L. Holt.)

on the strength of that instrument Annie Kentwell claimed she was entitled to some consideration in the deed, but I don't know. Mr. Withington fixed it over there. He fixed the \$5,000 to Mrs. Kentwell later. The \$5,000 which was paid for that interest was the interest which I was obligated to pay weekly to Mr. John Dominis Holt under my agreement.

I think I showed Mr. Castle the letter to the effect that they wanted \$5,000 more and there was no scribble about it. I think Mr. Withington was authorized to go as high as \$40,000. I think the \$5,000 was not only for my release but there was still the obligation of John D. Holt for the portion of the Holt Estate property in the hands of the Hawaiian Trust.

Annie Kentwell did convey whatever interest she had in the real estate under the deed of May 2, 1910.

(Witness was thereupon shown a document dated August 31, 1906, Exhibit 2-G herein, being an assignment of rents, Eliza R. P. Christian to Annie Kentwell.)

WITNESS RESUMES: I have never seen that instrument before. Formerly my uncle was drawing from me, or through my trustee \$150 per month, and naturally if the lands were sold to the Waialua Agricultural Company, that income stops, and naturally I asked him that that allowance be reduced from \$150 a month which we agreed later to be \$50 a month. I think I did write a letter to Kentwell saying that if they sold out on the agreed basis

(Testimony of James L. Holt.)

they would be out of it "holus bolus" and I would expect to be in effect released. The instrument of May 2, 1910 is a release of all the right, title and/or interest of Eliza Christian to me, including any claim she had against my trustee, John F. Colburn, or myself.

After the conveyance of May 2, 1910, Mr. Withington came back with the deed as far as San Francisco, and Albert Christian executed it there. Then, later on in May 1910, we conveyed our two-thirds interest over to W. R. Castle, Trustee.

I would not say, under oath, that I did not write Mrs. Christian letters. Referring to the letters purporting to be copies of letters signed by Mrs. Christian, I may have received such letters. I would not swear to it. The letters are prima facie evidence to the fact that Mr. Kentwell and Mrs. Christian were talking over the subject of the Waialua sale.

(Witness was shown a memorandum dated April 28, 1919, later received in evidence as Exhibit 2-H.)

WITNESS RESUMES: It may be possible that I did receive a couple of letters from her. I dispute the fact that I made direct remittances to Mrs. Christian. The memorandum you showed me is in my handwriting.

(Respondent's Exhibit 2-H, being the memorandum testified to, was received in evidence without objection, and reads as follows:

(Testimony of James L. Holt.)

"Apr. 28/19

Remitted \$200—

February remittance to Mrs. Eliza Christian direct—cannot locate her letter. Hereafter any funds on hand from income will be remitted direct by us.")

WITNESS RESUMES: By this memorandum I meant the Hawaiian Trust Company should remit directly to my cousin. This Memo was part of a letter to Kentwell notifying them that the matter had been turned over to the Hawaiian Trust Company and to deal direct with my uncle.

I remember receiving a letter from a nurse telling me about Eliza's condition after her last baby. This was in 1916 and the nurse had written me that my cousin was in very distressed circumstances and neglected by the Kentwells. She had been put out by the Kentwells and was in need of clothes and other things. I think that is the time I sent money to Mrs. Christian in charge of this home and this nurse.

As to Eliza's mental condition being discussed with people I was doing business with, I don't think the question came up in one way or another. I always knew that Mrs. Kentwell was acting as her guardian appointed by the court.

(Respondent's Exhibit 2-L, being the account taken from the books of Castle & Cooke, Agents for Waialua Agricultural Company, Limited, in relation to the purchase of the two-thirds interest

(Testimony of James L. Holt.)

in the Holt lands, was received in evidence without objection, and reads as follows:

Honolulu, Hawaii, Oct. 23, 1911.

MR. R. W. CASTLE, Trustee.

IN ACCOUNT WITH CASTLE & COOKE, LIMITED.

Date 1910	Items	Amount
May 6	To Cash paid J. F. Colburn	1,000.00
" "	Welch & Company, N. Y. a/c cash under L/C to D. L. Withington £85.0.0	419.59
11	Welch & Company, N. Y. a/c cash under L/C to D. L. Withington £7225.0.0	35,637.94
14	Welch & Co., N. Y. a/c cash under L/C to D. L. Withington £73.1.9	
31	Stamps on Deed James L. Holt to W. R. Castle, Tr.	600.00
	Stamps on deed Kentwell et al to J. L. Holt	140.00
	Cash to J. F. Colburn and Jas. L. Holt	60,000.00
June 2	Recording Fee Holt deed	61,140.00
5/16	Welch & Co., S. F. a/c cash under L/C to J. F. Colburn	6.00
5/17	Welch & Co., S. F. a/c s/dft. favor W. H. Chickering a/c L/C of J. F. Colburn	100.00
5/19	Welch & Co., a/c cash under L. C. Colburn	2,130.00
" "	Welch & Co., a/c cash to Roos Bros. a/c L/c of J. F. Colburn	100.00
5/21	Welch & Co., S. F. a/c s/dft. favor 1st Nat. Bank a/c L/C of J. F. Colburn	44.60
		802.20

(Testimony of James L. Holt.)

Date 1910		Items	Amount
" "	Welch & Co., S. F. a/c cash under L/C to J. F. Colburn.....	50.00	852.20
5/23 "	Welch & Co., S. F. a/c cash under L/C to J. F. Colburn.....	61.15	
" "	Welch & Co., S. F. a/c cash to Hotel Stewart a/c L/C J. F. Colburn.....	102.05	773.20
5/31 "	Principal and Interest on following Notes to May 31/10, said Notes being turned over in part pay- ment for land purchased as of said date: Balance Note John F. Colburn, Tr., and Jas. L. Holt dated May 21/08.....	9,336.42	
	Amount Note John F. Colburn Tr., and Jas. L. Holt dated March 29/10.....	2,000.00	
	Interest on \$9336.42 from April 1/10 to May 31/10 at 8%, 60 days.....	124.49	
	Interest on \$2000.00 from March 28/10 to May 31/10 at 8%, 2 mos. 3 days.....	28.00	11,488.91
21	To Cash a/c Jas. L. Holt to cover bal- ance for advances cables, etc. re Holt Est. purchase Waialua.....	1,144.00	
" "	Cash to Jas. L. Holt a/c self for Holt Est. purchase at Waialua.....	5,000.00	6,144.00
30	" Recording Fee Warranty Deed E. H. Kentwell and J. D. Holt et al to Jas. L. Holt.....	7.50	
" "	Salary paid Albert Christian by E. P. Co. during his absence from the plantation May 1, to June 15/10 inclusive a/c Holt purchase.....	90.00	97.50
Sept. 7/29	Welch Co. a/c cash to Jas. L. Holt.....		500.00
30	To Castle & Withington for cablegrams a/c J. L. Holt.....		11.55
Dec. 31	" Castle & Withington for clerical & guide services rendered Mr. Withington in London.....		14.50
			<u>\$120,820.03)</u>

(Testimony of James L. Holt.)

WITNESS RESUMES: The instrument in evidence as Exhibit D-37 is not the modified agreement as signed. I probably had a copy but it is so long ago I must have destroyed it. We moved several times. I know I made a search for it and couldn't find it. The modified agreement was signed about April 29th or 30th in Castle's office. Colburn objected to the warranty clause.

(Witness thereupon was shown a letter dated April 21, 1910, and identified the signature of John F. Colburn, which was received in evidence without objection, as Respondent's Exhibit 2-M, and reads as follows:

Honolulu, April 21, 1910.

To the Waialua Agricultural Co., Ltd.,

W. R. Castle, Trustee,

And Whom it May Concern.

Dear Sirs:

Referring to an agreement dated the 15th day of April, A. D. 1910, assuming to bind myself and one, James Lawrence Holt, to the sale of certain lands and interests at Waialua to the Waialua Agricultural Company, Limited, or its order, I beg leave to say that I have looked over said agreement and being dissatisfied as to the form of same in a number of particulars, I have decided to refuse and hereby refuse to sign the same.

Yours very truly,

(s) JOHN F. COLBURN.

(Testimony of James L. Holt.)

Witness thereupon was shown a letter dated June 10, 1910, identified the signature of John D. Holt, and as to the signature "Eliza R. P. Christian" stated "It looks like hers," whereupon the letter was received in evidence without objection as Respondent's Exhibit 2-N, reading as follows:

159 Woodstock Road,
Oxford, June 10/10

To the Honorable Judge W. J. Robinson,
Honolulu, H. I.

Dear Sir:

We, the undersigned beneficiaries under the Will of R. W. Holt, deceased, do hereby respectfully request your Honor to appoint James Lawrence Holt, Esquire, of Honolulu, to be Trustee or Administrator of the said Estate, in place of John F. Colburn, Esq. Given under our hands and seals on this 10th day of June, A. D. 1910.

(s)	JOHN D. HOLT	(x)
"	ELIZA R. P. CHRISTIAN	(x)
"	ANNIE H. KENTWELL	(x)
"	LAWRENCE K. KENTWELL	(x))

WITNESS RESUMES: I testified yesterday that I knew Mrs. Christian was an imbecile from birth, or words to that effect. This is the first time I have been called to testify under oath as to her imbecility. My cousin, Mrs. Christian, did marry

(Testimony of James L. Holt.)

and there was an annulment proceeding brought in respect of that marriage. I think I testified at that trial. I don't know whether I testified that Eliza was a bright girl, or words to that effect. I will not testify now nor swear now that I didn't so testify at that trial.

Although it is true that I testified for the defense in the annulment proceedings brought on behalf of Eliza Christian against Albert Christian, I can't positively state what I did say at those proceedings.

Re-direct Examination.

I never, to the best of my recollection, have sat down and written a letter to Eliza Christian herself in which I discussed with her any matter of business or made any offer relative to her property.

"Q. And am I correct in saying on cross-examination your testimony was to the effect that in remitting direct to her meant remitting direct to this home where she was in London?

A. That was a memorandum I gave to the Hawaiian Trust Company to send \$200 to help out Eliza's pilikia."

("Pilikia" is a Hawaiian word meaning "trouble.")

(On questions by the court, the following proceedings took place:

"The COURT: Before you go on with your direct I want to clear up a thing—just what

(Testimony of James L. Holt.)

you want to testify to as a fact, whether or not you did or do you remember receiving letters purporting to be letters from Eliza direct or whether you never did receive letters purporting to be letters from Eliza direct, in and about the years 1909 and 1910?

A. I said I probably did receive one or two letters from Eliza, but as to counsel's wanting to pin me down as to whether those were identical letters, I would not swear to it.

The COURT: I am not talking about any particular letters that are here, but I want to know what your statement is as to whether there were letters that came to you during that period purporting to come from Eliza, or whether or not there were any such letters?

A. I think there were one or two.

The COURT: There were some letters, whether copies exist today or not is not my question—there were letters purporting to come from her direct to you?

A. I believe so."

The court, in referring to Exhibit D-37, said:

"I understand from this witness, both on direct examination and cross-examination, and that he is now testifying, that the draft in evidence was the first negotiated document not signed, and a document based on that was signed by himself and Mr. Castie and a revision insisted upon by Mr. Colburn was finally executed by all three parties.")

MARIE L. SEA

was called as a witness for Petitioner, was sworn and testified as follows:

Direct Examination.

I did not know Eliza Christian very well until she came to my home out on Piikoi Street about six weeks after her baby was born. Thereafter she lived with me for six or seven months. She left me to get married.

(Petitioner's Exhibit E was received in evidence without objection. Such exhibit was an agreement of adoption dated June 12, 1902, between George C. Sea and Maria Louisa Sea, his wife, parties of the first part, and John D. Holt, Sr., and Eliza Holt, a minor, parties of the second part, by which the Seas adopted the child of Eliza Holt. The agreement sets forth the consent of Eliza Holt and the consent of John D. Holt, Sr., her father. The agreement is signed by all of the named parties, including Eliza Holt, and is executed before the Honorable W. J. Robinson, Judge of the Circuit Court, First Judicial Circuit, Territory of Hawaii, and such agreement was thereafter duly recorded.)

WITNESS RESUMES: Eliza was about 16 years old when she came to my place. She could not care for the child unless someone told her what to do. She did not know when to feed it when the child needed feeding; how to change it. I looked after that. She was very helpless. Sometimes she would have her clothes inside out and the buttons

(Testimony of Marie L. Sea.)

inside. She would wear them that way unless I noticed it. She was an imbecile, to my way of thinking,—lolo. She was very quiet; not communicative. I used to hear Eliza talking to her father and I remember that she asked her father for a pair of shoes for the baby. The baby must have been only three months old at this time. Her father told her the child was too small and for her to wait. Another time she asked her father for a locket and the father said the child was only a baby and not old enough to have anything like that. I talked to her sometimes and she would answer, you know, like, using that. (Witness indicated by squirming her face around.)

Before we went to court, when the baby was adopted, Eliza wanted to give me the child. The judge told Eliza that she was giving her baby to me and that it wasn't hers any more. He explained the thing to Eliza. She did not read over the paper and I have never heard her read anything.

Cross Examination.

Eliza would dress herself but would sometimes make a mistake. I have never seen her write except when she wrote on the deed of adoption. Eliza did not read it. She could not read. She never read. It was Mr. Holt who read the deed. When she asked her father to buy a pair of shoes for the baby she asked that in English. The only Hawaiian word I ever heard her say was "mopuna." She said,

(Testimony of Marie L. Sea.)

"You buy this for the mopuna," (referring to the baby.) Eliza was fond of her baby but it seemed to me that it ~~was~~ indifferent whether she had any love for it. She came to our house again after the baby died and did not show emotion, no tears being shed. It was then twenty-two months old. I heard her tell her father that she wanted a chain for the baby and that she wanted it to be a gold chain. Eliza was willing to help in the household work but you had to go over her work for she did it her own way. I never saw her sew. She wore glasses and there was something wrong with one of her eyes. When she was living with me she was very quiet and obedient; whatever I told her to do she would do. I have never seen Eliza in any temper. She seemed happy with her baby.

"Q. You do not feel that Eliza Holt was feeble-minded, do you?

A. She was one that needed protection."

Eliza was very devoted to her father and he to her. Eliza used to speak about the different island girls she knew in school, and spoke very well of Princess Kawanakoa, saying that the Princess was very nice to her. At one time Mr. Kentwell gave her some money. She did not mention the amount of money but said that Mr. Kentwell had given it to her for the baby. There were no children at our place. Sometimes the neighbors' children would come over. She would rather play with them

(Testimony of Marie L. Sea.)

than with older children. There were no older children for her to play with at the time.

Re-direct Examination.

Eliza used to see Princess Kawananakoa come over to my neighbor's house. Eliza would then say to me, "Oh, here is Princess Abbie! She was very nice to me in San Jose." Eliza's baby was very bright; more bright than her mother.

MRS. MARY PADAKIN

was called as a witness for Petitioner, was sworn, and testified through the Hawaiian interpreter, as follows:

Direct Examination.

I am seventy-four years of age, and knew Eliza in Honolulu when she was a large girl living with her father. I would sometimes meet her on the road, but lost sight of her when she went away with Mrs. Kentwell. I had heard of Albert Christian but did not personally know him. When I would meet Eliza in company with her father or Mrs. Kentwell or Mrs. Sea on the street, I would say in Hawaiian, "How are you?" whereupon Eliza would squirm her face and smile, which is all that I would observe; I tried to talk to Eliza, but there was no speech; she could not talk; she was what white people called "silly,"—in Hawaiian "ihepa"; I did not speak English but tried to speak to Eliza in Hawaiian.

(Testimony of Mrs. Mary Padakin.)

Cross Examination.

Eliza was older than fourteen at the time. I knew Eliza and she always made the gestures referred to when she was spoken to. By "ihepa" I mean not only the gesture described but in addition Eliza was unable to speak. While she might have been able to speak on other occasions, she did not on the occasions when I met her.

MRS. A. S. RIIS

was called as a witness for Petitioner, was sworn, and testified as follows:

Direct Examination.

I was born and raised in Honolulu. I knew Eliza Holt very well from a child, knowing her in Honolulu. I knew old John D. Holt, Hanakalani Holt and other members of the family, and often called at the Holt home in Honolulu. After Eliza with her family had moved to another locality, I would meet her once in a while on the street with her father or Mrs. Kentwell. From what I observed of Eliza Holt I would describe her as being "ihepa," simple-minded like, (witness squirming her face to illustrate her testimony). When I would speak to Eliza, asking her how she was, I would obtain no response.

Cross Examination.

I tried to talk to Eliza more than once, and Eliza